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PREFACE

Private Companies have caught a fancy of the business community and other enterprisers, who on the one hand desire to retain control over the management of the business along with other associates and at the same time do not wish to risk their whole property, movable or immovable, ancestral or self-acquired, in such business. The law relating to private companies has evolved out of the law of partnership, the basic principles of which are applicable to a large extent in the conduct of the business of a private company and at the same time the liability of the partners who are called as shareholders is limited according to their choice. The secrecy which is very often the corner-stone in the success of the enterprise is maintained to a very large extent just as in partnership and at the same time the company has a juristic entity distinct from the members thereof and can act and enter into contracts and borrow money without making the members thereof personally liable for the obligations so incurred.

This book has been written with a view to assist the business community and other persons who are interested in forming the private company to inaugurate their enterprise on a sound and firm basis with the knowledge of their rights and obligations and if they are able to seek guidance in their daily routine or at the time of emergency by reference to the book which has been compiled to assist them in all possible situations that might arise, it shall have served its purpose. Much assistance has been derived from the well-known publications on this subject such as Jordan's publications and other well-known and authoritative treatises and books on company law such as Palmer, Buckley, Sarkar etc., the indebtedness to which is gratefully acknowledged. Special care has been taken to keep in view the Indian conditions and circumstances and wherever possible, reference has been made to Indian decisions. The forms and precedents printed for the use of the reader have been incorporated after reference to other publications in the market and wherever necessary, they have been modified in order to serve the practical needs of the business community.

Lawyers and students of company law will find much in this short treatise, which will help them in their professional and academic requirements.

Only those sections of the Indian Companies Act and regulations prescribed in the schedule of that Act have been incorporated which are of particular use for private companies.

In the last chapter, the statutory law relating to registration, stamp, court fees, arbitration as well as the statutory rules framed in 1943 under the Indian Companies Act have been incorporated, which, it is believed, will be of immense practicable use to the reader and will save a reference to voluminous books on such subject.

AUTHORS

PUBLISHERS NOTE.

This treatise on Private Companies in India is the second or 'B' part of our comprehensive work, the Law and Practice of Partnership and Private Companies in India. Private Companies, being of later growth and having their origin in the law of partnership have gradually assumed a different form and at the same time are adopted and referred to by different set of businessmen. It was considered appropriate to supply the Law and Practice relating to Private Companies in a separate volume for the use of firms who wanted to convert their business into a Private Company or persons who wanted to start a new concern as a limited Company and thereafter to assist them in carrying on the business with limited liability retaining at the same time most of the privileges of partnership business. Otherwise also, the Law of Private Companies has been developed in different channels and different questions arise in the working thereof, *e. g.* those relating to shares in a Private Company, the meetings of the shareholders, the authority of those in charge of the management and the dissolution of companies, which are not to be found in the Law of Partnership.

In order to save the time of the reader, an exhaustive index has been prepared and the subject matter of the treatise is divided into appropriate heads which themselves are sub-divided into separate sub-heads and marginal notes are appended to catch the eye of the reader and enable him to find out the answer to his query quite easily and without loss of time. The arrangement of the subject matter itself is on logical basis and explains in lucid form the principles on which the Company Law is based and is meant to meet the requirements of practice in the formation of Private Companies, their working, and their dissolution. It is hoped that the business community will find in this small volume all what is required by them and the publishers will be grateful, if any suggestions are made to make this treatise more useful and of practical help to those for whom it is intended.

The publishers are grateful for the revision of the treatise made by Mr. N. S. Bindra, Advocate Hige Court, Lahore who has critically examined it thoroughly and made useful additions thereto wherever necessary.

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Private Companies in India

Law and Practice.

CHAPTER I

HISTORY

Whenever large number of persons joined together in an undertaking it became extremely difficult for them to carry on business on the lines of partnership. On the death of a partner, the partnership could not continue without a fresh contract, express or implied, amongst the surviving partners, the transferability by a partner of his share was difficult to achieve without the consent of all the other partners and it was extremely inconvenient for such a large body of persons to manage the business personally. Moreover the Law of Partnership is based on the confidence reposed by the partners in each other and in such large associations it was impossible to retain such confidence. Gradually unincorporated Associations came into being in England which recognised the transferability of the shares of the members thereof, and to secure continuity of the concern notwithstanding the death or bankruptcy of any of the members thereof, Common Law recognised such unincorporated Companies as having a continuous existence; moreover another special feature of such unincorporated associations or Companies was the vesting of the management in a select body of Directors to the exclusion of other members generally. Such Associations, however, were not recognised as juristic entities. In the 17th Century several companies were incorporated by the Royal Charter such as East India Company, which could deal with the property owned by the same and be bound by contracts and do all such acts as an ordinary person could do. Such a Company was considered a 'juristic person,' quite distinct from the persons composing the same. So complete was this corporate autonomy that it was unaffected even by a direction contained in the Charter in limitation of the Corporate powers. For the Common Law has always held that such a direction of the Crown though it may give the Crown the right to forfeit or annul the Charter, if the direction is disregarded, could not derogate from that plenary capacity with which the Common Law endowed the Company, even though the limitation was an essential part of the so-called bargain between the Crown and the Corporation. It has, therefore, been held that even though a Corporation incorporated by the Royal Charter may have exceeded its powers in entering into a contract, thought may entail forfeiture, the transaction would nevertheless be valid, though the Crown might take advantage of it by forfeiting the charter.¹ Later on Companies came to be incorporated under Special Acts of Parliament, Such Statutory

Unincorporated Companies.

Chartered Companies.

1. See *Sabarathnam v. Official Liquidators*, A.I.R. (30) 1943 Mad. 111, 115.

Companies could do such acts only as were authorised directly or indirectly by the Statutes creating it. The delimitation by the Legislature of the powers of Statutory Companies is in marked contrast of the unrestricted corporate capacity of the Charter Companies. The objects which a Statutory Company could pursue must be circumscribed within the bounds set and ascertained by the Act incorporating it, and the powers which the Corporation may lawfully use in carrying out these objects must either be expressly conferred or derived by reasonable implication from its provisions. The Imperial Bank of India is an illustration of such a Statutory Company in India, incorporated under Act 47 of 1920 by the Indian Legislature. These Statutory Companies are not governed by the Companies Acts but the Act by which they are formed governs their whole constitution. A special peculiarity of these Statutory undertakings, and one which distinguishes them from ordinary trading Companies registered under the Companies Acts is that they are, in many cases, invested with compulsory powers; for instance, to commit, what, but for these powers would mean, a nuisance; otherwise their constitution is closely analogous to the ordinary Companies incorporated under the general Acts relating to Companies in as much as the liability of the members, for example is limited to the amount of their shares; and the Company, in each case as regards its powers, is restricted to the purpose of its creation and the terms of its mandate whether contained in a separate Act or in the objects mentioned in its Memorandum of Association. Thus a Company incorporated by an Act for special purposes cannot devote any part of its funds to objects unauthorised by the terms of its incorporation, however, desirable such application may appear to be.¹

Although in its initial stages the Parliament attempted to put down joint stock Companies and passed a statute, commonly known as Early Companies Acts. "Bubble Act," (Statute 6 George 1, ch. 18), but notwithstanding the passing of this Act, Joint Stock Companies grew in number and in 1825 the 'Bubble Act' was repealed and the Parliament recognised the validity of these Joint Stock Companies. In 1826 the Parliament enabled Joint Stock Companies to acquire the privilege of suing and being sued in the name of a public officer by merely complying with the conditions specified in the Act and filing certain 'Returns' with the Officers of the Crown. In 1844 the Crown was empowered to issue letters patent to a Company, without incorporating it, whereby it could sue and be sued through a public officer as prescribed. In the year 1844 another general Act was passed by the Parliament which enabled joint stock Companies to obtain certificates of incorporation without the necessity of an application either for favour of a Royal Charter or the privilege of a special Act of Parliament. These Acts, however, did not limit the liability of the members so far as the outsiders were concerned, and were treated on the same basis as partnerships. It was for the first time in 1855 that by virtue of Statutes 18, 19 Victoria, Ch. 133 that the Companies incorporated under the Act of 1844 were enabled to obtain certificates of incorporation with the liability of its members limited. In 1862 a Consolidating act was passed which is sometimes called the "Magna Charta of co-operative Enterprise" which introduced the system of preparing a Memorandum of Association to be subscribed by 7 signatories thereto and the payment of a fee to enable the Company to be incorporated. Various amendments were made from time to time thereafter with respect to such Companies and in the year 1908 the Companies Consolidation Act was passed (which is the fore-runner of Indian Companies Act of 1913). The entire Law relating to Companies was over-hauled after the First Great War and the present Companies Act of 1929 came into operation after consoli-

¹. See *Foster v. London C.D. Rail. Co.*, (1895) 1 Q.B. 711, 715, 716.

dating the Companies Acts 1908 and amendments thereto till 1929 and certain other enactments connected with the said Acts.

Before the passing of Companies Consolidation Act of 1908, a "Private Company" simply meant such a Company which did not invite the general public to contribute to its capital at the time of incorporation, but otherwise these Companies possessed all the attributes of, Private company. Public Companies and even their shares began to float freely in the market. So the Companies Consolidation Act divided the Companies into private and public and that division is still maintained.

Act XLIII of 1850 was the first Act passed in India relating to Joint Stock Companies being based on the English Statute of 1844. At that time the Companies were registered by the Supreme Courts of Judicature at Fort William (Calcutta), Bombay and Madras. It enabled incorporated Companies to get themselves registered but Early Acts. the personal liability of the members thereof was unlimited as in partnership, though they were treated as distinct legal entities capable of suing and of being sued in their corporate name. This Act was followed by Joint Stock Companies Act XIX of 1857 and for the first time limited the liability of the shareholders (except Banking and Insurance Companies). Soon thereafter Act VII of 1860 called the "Joint Stock Bank Act" was passed whereby the liability of the shareholders of Banking and Insurance Companies also came to be limited. All these Statutes were consolidated under the Act X of 1866 which was recast in 1882 as Act VI of 1882, called the Companies Consolidation Act, which brought the Indian Law upto date on the lines of English

Act, up to that time. Several amendments were made to Present Act. this Act and finally the present Act VII of 1913 consolidated and amended the law relating to trading companies and other associations. It was, however, felt that the development of business necessitated in England as well as in India new legislation and accordingly comprehensive amendments and additions were made in India to the Act of 1913 by Act of XXII of 1936, which received the assent of the Governor General on 27th October, 1936 and came into operation on 15th January, 1937 (*vide* Gazette of India, dated 28. 11. 36, part I at page 1492).

The Indian Companies Act, however, does not apply to joint families carrying on joint family trade or business. The Act provides Joint Hindu family firm. that no company, association or partnership constituted of more than 10 persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a Company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor-General in Council or of Royal Charter or Letters Patent and that no company, association or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor-General in Council or by Royal Charter or Letters Patent and that where two or more joint families carrying on joint family trade or business form a partnership in computing the number of persons for the purpose of the above provision of law, minor members of such families shall be excluded.

It is interesting to note the similarity in some important respects of the newly developed juristic entity, namely the company in England and a joint Joint Hindu family legal person. Hindu family firm carrying on business in ancient India. It is well known that a joint Hindu family firm is regarded as a juristic entity capable of holding property and represented by a *Karta* or the managing member to all intents and purposes in its

dealing with outsiders. Tellang J. quoted Mr. Mayne in describing the whole coparcenary as a sort of corporation.¹ Piggot and Walsh, JJ., remarked :

"The position of the head of the joint Hindu family is not the same as that of an ordinary business agent and according to the true view, a joint Hindu family being a legal person according to Hindu Law lawfully represented by and acting through the Managing member. The managing member or head thereof, is included ordinarily in the term *"a person"*."

Very recently Niamatullah and Benett, J J., observed,

"A joint Hindu family has always been treated as a juristic person on whose behalf contracts can be entered into or enforced."²

In a more recent Full Bench of Lahore High Court, Sir Tekchand opined that the essential features of a joint Hindu family governed by the Mitakshara are (1) unity of ownership of joint property and (2) unity of juristic existence in dealing with third parties. The family is a sort of corporation having a continued existence. Its constitution might change by birth, adoption, marriage or death, but as regards strangers it is deemed to be a single individual separate legal entity.⁴

As regards the personal liability of coparcener in a Hindu joint family it is well established that the managing member, *Karta*, is liable not only to the extent of his share in a joint family property, but being a party to the contract he is liable personally, that is to say, his separate property is also liable. But as regards the other coparceners they are liable only to the extent of their interest in the family property, unless, in the case of adult coparcener the contract sued upon though purporting to have been entered into by the manager alone, is in reality one to which they are actual contracting parties or one to which they can be treated as being contracting parties by reason of their conduct or one which they have subsequently ratified and in the case of minor coparceners, unless the contract has been ratified by them on attaining majority.⁵

It will be observed that a non-active Hindu coparcener is not liable personally as a partner with respect to the liabilities of the joint family firm incurred by the managing member, just as a shareholder in a limited liability company, is not liable for the debts of the company except to the extent of his shares therein.

But the conception of a joint Hindu family firm is quite distinct from a joint stock company or a private company in almost all its aspects. Their evolution, history and development has been on different lines, based on different ideas and legal theory, different considerations and objects and nurtured in different environments. For instance the main feature of a Hindu undivided family is jointness of tenancy with a right of survivorship amongst its constituents, while the general characteristics of a company is its separateness of interest and not survivorship.⁶ Again the *karta* of a joint Hindu family is not a trustee or a person related in a fiduciary capacity with the other members of the family, while in case of a company, the Managing Director or the Board of Directors are regarded as trustees of the company's monies and property and agents in the transactions which they enter into on behalf of the company. They are connected in a fiduciary relationship with the company. In fact there is no analogy between a joint Hindu family firm and a trading company incorporated under the Indian Companies Act with regard to the incidents and rights and liabilities attaching to the constitution, the continuation and the disruption of such legal entities.

1. *Appaji Narhar v. Ramchandra*, 16 Bom. 29, 39 F. B.

2. *Krishananand v. Raja Ram*, 44 All. 393.

3. *Shanker Lal v. Toshani Pal Singh*, A.I.R. 1934, All. 553, 556. See also *Vivian Bose, J.*, in *Sagarmal v. Tulji Ram*, A.I.R. 1936 Nag. 252, 253. *Sirikant Lal v. Sidheshwari Prasad*, 16 Pat. 441.

4. *Sri Ram v. Collector Lahore*, I.L.R. 1942 Lah. 717, F.B.

5. Mulla, *Hindu Law* para 234, at p. 258, 259, 9th edition.

6. *Ram Rakha Mal and Sons Ltd. v. Commissioner of Income-tax, Lahore*, I.L.R. 1937 Lah. 325

CHAPTER II

CHIEF CHARACTERISTIC OF A COMPANY

A company incorporated under the Indian Companies Act is a juristic person. The different personalities of the individuals composing it are crystallized or metamorphosed into a different legal entity which can exist and carry on business perpetually irrespective of the fact that one or more members of the Company have ceased to be members thereof or other new members have stepped in. The continuity of a corporation in any individual case is comparable to the formal persistence in natural phenomena. "The river Thames is same river although the individual particles of water composing it are continuously changing".¹ That it is an entity distinct and separate from the individuals composing it may well be illustrated from two leading cases, namely *Foster & Sons Ltd. v. Commissioner of Inland Revenue*² and *Salomon, v. Salomon, and Co., Ltd.*³

In Foster's case, a partnership firm transferred its business to a limited liability company. The identity of members remained as before and the usual form was adopted of a sale by the partners to the new company, the consideration being expressed in fully paid up shares. Upon this transaction the Inland Revenue Authorities claimed the duty payable upon a sale arguing that there had been a transfer of property from certain persons to another person; this person, they stated, was quite distinct in law from the vendors and the fact that the former partners were the only incorporators of the new company was irrelevant. On the other side it was argued that the sale was purely nominal and that since there had been no real transfer of any beneficial interest, no duty was payable for such transfer. It was held, however, that the view of the Commissioner (Revenue Authorities) was correct.

In "Salomon's" case, Mr. Salomon sold a prosperous business to a registered company formed by him named as Salomon and Co. Ltd., whose members were only the seven subscribers, namely, Mr. Salomon, his wife, daughter and four sons. Mr. Salomon was allotted 20,000 shares of £. 1/- each fully paid up and £. 10,000/- debentures of the company in consideration of the sale of his business worth £. 30,000/-. Only six other shares were issued, that is to say one fully paid up share for the wife, one for the daughter, and 4 for the four sons, each getting one share. Salomon was himself the Managing Director. Owing to strikes and bad trade the company went into liquidation with unsecured debts amounting to £. 7000/-. Now the question arose whether the debentures issued by such a company in favour of Salomon himself should be allowed to have a preference over the other *bonafide* unsecured creditors of the company. Such creditors claimed that Salomon and Co., Ltd., was really the same person as Salomon, he could not owe money to himself and that they should be paid their £7000/- first in preference to him. The lower Courts held that the company was a mere agent for Salomon and he must indemnify as agent against the losses it had sustained by paying £7000/- himself. The House of Lords did not agree with the contention of the unsecured creditors and held that once the company is incorporated it became an entity entirely separate from Salomon and must be treated like any other independent person and the motives of those who promoted it were entirely irrelevant. The company could contract freely with any member irrespective of the fact that he might have in it property and irrespective of the control he might exercise over its affairs. Lord Macnaghten said "There is nothing in the

Company can contract with member.

1. Blackstone Commentaries V. 1, at page 473.

2. (1894) 1 Q.B., 516.

3. 1897 A.C. 22.

Act requiring that subscribers to the Memorandum should be independent or unconnected or that they or any of them should take a substantial interest in the undertaking, or, that they should have a mind and will of their own or that there should be anything like a balance of power in the constitution of the company."

His lordship further observed, "It has become the fashion to call companies of this class "one-man companies." That is taking a nickname. If it is intended to convey the meaning that a Company which is under the absolute control of one person is not a company legally incorporated, although the requirements of the Act may have been complied with, it is inaccurate and misleading: if it merely means that there is a predominant partner possessing an overwhelming influence and entitled practically to the whole of the profits there is nothing in that that I can see contrary to the true intention of the Act, or against public policy, or detrimental to the interests of creditors. If the shares are fully paid up, it cannot matter whether they are in the hands of one or many. If the shares are not fully paid up, it is as easy to gauge the solvency of an individual as to estimate the financial stability of a crowd." Accordingly it was finally held that once the company is incorporated, it must be treated like any other independent person and the motives of those who promoted it are irrelevant. The company could not be agent for Mr. Salomon, for either:—

- (1) It was a legal person—then it acted for itself; or
- (2) If it was not a legal person—then it could not be agent at all.

The Company is at law a different person altogether from the subscribers to the Memorandum. It was, therefore, held that Salomon was entitled to recover his dues under the debentures; and Salomon was not responsible for, and his goods could not be seized for the debts of the company.¹

CLASSIFICATION OF COMPANIES

The law recognizes the following kinds of companies which are incorporated under the Indian Companies :

(i) *A company limited by shares*, i.e. a company having the liability of its members limited by the Memorandum to the amount, if any, unpaid on the shares respectively held by them.

(ii) *A company limited by guarantee*, i.e. a company having the liability of its members limited by the Memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up.

(iii) *An Unlimited Company*, i.e. a company not having any limit to the liability of its members.

Every member of a company limited by shares is liable to pay for the shares he agrees to take up in the company to the extent of their value. But once a man pays the full amount either at the time of application and allotment or subsequently by calls, his responsibility for payments comes to an end. This, in other words, limits the liability of a person and he cannot be subjected to unlimited risks that a business venture may entail. A business may require only a part of the capital. In that case he would pay a certain portion on his shares only, and the shares would be termed as partly paid. The balance can be called by the Directors whenever required for business purposes and according

1. See also *T. R. Pratt Ltd. v. E. D. Sasson and Co.*, 60 Bom. 326 (But *In re Sir Dirshaw Maneckji Petit*, 51 Bom. 375, not a genuine one-man company).

to the terms of the Articles. Unpaid portion can be called by the liquidator if the assets are not sufficient to meet the liabilities. If partly paid shares are transferred the responsibility for payment of the balance is taken over by the transferee.

Therefore companies limited by shares have come to be recognized as the most popular form for business purposes. Practically all the private limited companies are registered as companies limited by shares.

CHAPTER III

WHAT IS A PRIVATE COMPANY.

A "Private Company" has been defined in S. 2 (13) of the Indian Companies Act, 1913 as a company which by its articles—

(a) restricts the right to transfer its shares if any ; and

(b) limits the number of its members to fifty not including persons who are in the employment of the company, and

Definition of private Company.

(c) prohibits any invitation to the public to subscribe for the shares, or debentures of the company (if any).

Provided that where two or more persons hold one or more shares in a company jointly they shall for the purposes of this definition be treated as a single member.

It should therefore be noted that association not for profit, company limited by guarantee, unlimited companies which have no share capital cannot be incorporated as Private Companies as restrictions required to be imposed in connection with the transfer of shares cannot be provided for in their Articles.

As against this definition of a Private Company a Public Company has been defined in S. 2 (13 A) as a company incorporated under this Act or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act, repealed thereby, which is not a private company.

We thus find that unlike a Public Company in which an invitation is issued to the public to contribute to its shares, a private company raises its capital by private arrangement. But this does not mean that a private company is prevented from issuing shares in a wide circle of persons. The only restriction in this respect is that it cannot publicly advertise for the same. Also the minimum number of its members that it must have is two and the maximum has been fixed at 50, which is exclusive of the number of persons who are its employees. The employees have been excluded so that any number of them may be allotted shares to give them a real and living interest in the concern.

Restriction on invitation to public.

The other distinguishing feature of a private company is that the right to transfer its shares is restricted by the Articles of Association.

Restriction or transfer.

A mere statement in the Articles of Association that the right is so restricted does not satisfy the requirements of law and some specific mode laying down the restriction is to be stated. For instance, the Articles may state that whenever a shareholder wants to transfer his shares, an offer for its purchase at a price to be determined by the Directors shall have to be made to the existing shareholders before the shares are given outside the existing circle of shareholders. The intention of the law is to keep the membership within a very narrow limit, such as a family or a circle of friends.

Member's pre-emptive right.

The privileges enjoyed by a Private Company as compared to a Public Company.

The Act makes certain exemptions in favour of private companies and some of the sections and provisions of the Indian Companies Act have been specifically excluded and declared inapplicable to private companies, with the result that the working and operation of private companies has been made quite simple as compared with Public Companies. The advantages and privileges enjoyed by a private company may be enumerated as follows :—

1. A private company can be formed by only two persons, as
Minimum number. against a minimum number of 7 required for a Public Company (S. 5).
2. In a private company there may be only one Director, whereas the
One Director. minimum number of directors required in a public company is three (S. 83 A).
3. The provisions regarding consent of Directors and the holding of quali-
Qualification as a fication shares as required by S. 84 are not applicable to
Director. private companies.
4. Unlike a public company the Directors of a private company are not
No retirement. liable to retirement by rotation and a private company may
have life directors, if so provided in the Articles of Asso-
ciation. (S. 83 B).
5. Some of the restrictions imposed on the Directors of a public company
Directors may sell are not applicable to the Directors of a private company,
undertaking. for instance, restrictions regarding selling or disposing of the
undertaking of the company or remitting any debt due by a
Director (S. 86 H).
6. There is no restriction on the period of office for which the Managing
Managing agent for Agents of a private company can be appointed, unlike that
life. of a public company where a limit of 20 years has been
laid. Also there are no restrictions on the form of remunera-
tion to be given to the Managing Agents, nor of advancing loans, to them (Ss. 87
A, 87 C and 87 D).
7. In a public company the Directors to be appointed by the Managing
Independent direc- Agents cannot exceed one-third of the total number, but
torate not necessary. this is not the case in a private company where it can be
provided in the Articles of Association that all the Directors
may be nominated by the Managing Agents or a Managing Director.
8. The provisions regarding prohibition of voting by interested directors
Unrestricted voting in a public company is not applicable to private companies.
power. (S 91 B).
9. A private company need not file a statement in lieu of prospectus,
No prospectus neces- [S. 98 (2)].
sary.
10. A private company unlike a public company can commence business
Commencement of and exercise borrowing powers as soon as it is registered
business. and the restrictions imposed by Ss. 101 and 103 are not
applicable to it.
11. No statutory meeting is to be held by a private company as required.
No statutory meeting. in the case of a public company under S. 77 (11).

12. At the time of annual returns a private company is not required to No balance-sheet filed. send a copy of its Balance sheet to the registrar. (S. 134).

13. The perparation of Balance sheets and holding of general meetings though compulsory under S. 131 for a private company, yet Private audit permitted. Balance sheets and accounts need not be audited and certified by qualified auditors as in the case of a public company, (S. 144).

14. Even provisions regarding sending of Balance sheet, profit and loss account to each shareholder are not applicable to a private company and it can keep its accounts and financial position as a guarded secret. (S. 131 (3)).

It will be thus seen that a private company enjoys many privileges and facilities in the matter of filing of returns and compliance with certain provisions of law. The object of these concessions is to encourage the formation of private companies and to allow persons to do their private business through this medium unfettered by the formalities of law.

For these reasons in Great Britain the popularity of a private company is well established and continues to spread. In fact more than nine-tenth of the existing registered companies are private companies. There is also a large number of important concerns registered as public companies but possessing many of the features of private companies, e.g. financed without appeal to the public for capital and having the transfer of shares closely restricted. Number of such companies, in India, however, is not large as their utility has not yet been fully realised by the commercial community. In the following chapter are enumerated some of the advantages of private companies as compared with partnership business.

CHAPTER IV.

THE ADVANTAGES OF LIMITED LIABILITY COMPANIES AS COMPARED WITH PARTNERSHIPS.

Trade being an essential attribute of social life of man, this instinct in him developed as facilities for transportation and contacts increased. It was realized that co-operation in trade, like other spheres of man's activities, was beneficial and essential. The business man thus realized that there was advantage in having a partner, with whose assistance many difficulties could be overcome and much larger ventures could be undertaken, which were not possible to achieve single handed. However, the question of the extent of trust that could be reposed in a partner has presented certain difficulties, and the development of the law of partnership in various countries is nothing but a history of the safeguards that have from time to time been adopted to protect the rights and liabilities of partners undertaking common business ventures. Commercial life has now become so complex and strained that it has become difficult to forestall all the eventualities in drawing up partnership deeds, and it is very often found that a business started on a very much restricted scale grows out of bounds and changes the whole concept of the activities of partners on which the original understanding was based. The development of joint stock companies has from the earliest times coincided with the increasing complexity of trade.

We give below some of the advantages resulting out of the creation of this legal persona, which is independently capable of holding property, entering into contracts and doing all that an individual can do under the law, with the additional advantage of enjoying a perpetuity of life, which can be terminated only

when the business can no longer be run at an advantage or is otherwise so desired to be put an end to.

A. Limited Liability. By registration of a business concern as a private company, the greatest benefit that is conferred on the partners or on the owners of the concern is the privilege of limited liability. A person who enters into a business whether on his own account or as partner in a firm is liable for all the debts incurred in the business to the full extent of his means. "By the common law of the country any member of an ordinary partnership is liable to the utmost farthing of his property for debts and engagements of the firm. The law ignoring the firm as anything distinct from the persons composing it, treats its debts and engagements as that of the partners and holds each partner liable for them accordingly.¹ "As between the partners" to quote Lord Justice James, "and the outside world (whatever may be their private arrangement between themselves) each partner is the unlimited agent of every other in every matter connected with the partnership business or which he represents as partnership business, and not being in its nature beyond the scope of the partnership. A partner who may not have a farthing of capital left may take moneys or assets of the partnership to the value of millions, may bind the partnership by contracts to any amount, and may even...involve innocent partners in unlimited amounts for frauds which he has craftily concealed from them."²

So infectious is this limited liability of a partner for an act of the firm that it is extended to any one, who, although not a partner, by words spoken or written or by conduct, represents himself or knowingly permits himself to be represented, to be a partner in a firm, and such a person is liable as a partner in the firm to any one who has on the faith of any such representation given credit to the firm, whether the person so representing himself or represented to be a partner does or does not know that therepresentation has reached the persons giving credit. (S. 28 Partnership Act) Under the Indian Partnership Act, 1932 every partner is liable to his last rupee for the payment of debts of the firm. This is a joint and severalliability, (*vide* S. 25 of the Partnership Act).

"Every partner is liable jointly, with all other partners, and also severally, for all the acts of the firm done while he is a partner." Such being the risk to which a business is exposed in the conduct of the business, the legislature in the interests of trade and public welfare has come to his rescue and allows him an opportunity to limit his liability by forming a private company. "These limited companies" to quote an eminent English Judge Sir, G. Jessel" are the offspring of a proved necessity, that men should be entitled to engage in commercial pursuits without necessarily involving the whole of their fortune in that particular pursuit in which they are engaged.³

Many families are ruined and driven to insolvency because one of the partners in a firm chooses to embark upon reckless business transactions, and there are practically no means in law to stop him from utilizing the credit of the partnership, which otherwise consists of men with good business integrity and reputation. Sometimes unexpected events bring about heavy losses in a firm running with a small capital with the result that not only is the capital wiped out but the private resources of every partner are strained to a breaking point. This prevents men of means from joining hands with those of small resources in

1. Lindley on Partnership, p 260, 10th edition.
 2. Baird's Case, 5 Ch. App. 725 at 733.
 3. See Palmer's Private Companies. p. 7, 38th edition.

business ventures with the result that men possessing very good business organization capacity are shut out for want of adequate capital. The formation of a private limited company affords an easy solution both to a family partnership and a person wanting to invest his capital with another of a comparatively lower means. In this way a person could choose that he would be responsible to a certain extent and no further. He could thus be allotted shares of that value. The man with a good business understanding and acumen can be appointed a manager and his power can be limited to any extent, and the person with a larger monetary stake can conveniently supervise the accounts etc., by becoming a director. As a matter of fact the powers of management and control can be adjusted in any manner through carefully drawn up Articles of Association.

Further, where by the wrongful act or omission of a partner acting in the ordinary course of business of a firm or with authority of his partners, loss or injury is caused to any third party or any penalty is incurred, all the other partners are also liable therefor to the same extent as the partner guilty of the tort. This liability of the firm for the tortious acts of a partner rests on precisely the same principles as the liability of a master for the tortious acts of his servants, in as much as both are merely branches of the law of principal and agent. Accordingly a firm of surgeons would be liable for the unskilful treatment of a patient by a member of the firm. A firm of engineers would be liable for the negligence of a partner in the design or construction of works. And similarly a partner who unlawfully induces the clerk of a competing trader to divulge the latter's business secrets will render his firm liable as well as, himself. A firm of newspaper proprietors would be liable for a libel inserted by an editor partner¹.

Again where a partner acting within his apparent authority receives money or property from a third person and mis-applies it, or a firm in course of its business receives money or property from a third party, and the money or property is mis-applied by any of the partners while it is in the custody of the firm, the other partners also are liable to make good the loss. Hence in a trading firm, if one partner borrows money for the purposes of the firm on the credit of the firm no duty is cast on the person advancing money to make further enquiry and all the partners are liable though the partner, borrowing misappropriates the money².

B. Continuity of Business. Wherever a person starts business and makes it a lucrative concern, it is always his desire to make it permanent, both for the sake of posterity and for love of the concern which he has built up. This can only be achieved by conversion into limited liability company. In the Articles of Association, the duties and powers of the managers are defined and in case his heirs are incapable of handling the business or they do not want to associate themselves actively with it they can leave it to the paid managers, who are guided by the routine already set up. All other modes of giving continuity to business such as creation of trusts, etc. have been found wanting for one reason or another. It can be safely said that so far no device or provision has been contrived to give a partnership the same continuity of existence as is available in the case of a limited company; and this is perhaps the greatest advantage that one always desires in the interest of posterity and love of venture.

1. Underhill, Partnership, pp. 69-70.

2. Saremal v. Punamchand, 48 Bom. 176.

Very often when a sole proprietor of a running concern dies, disputes amongst his heirs crop up and it becomes difficult to run the business as a single unit and its division also becomes impracticable. If the concern is a limited one, these difficulties are averted, as the heirs succeed to the shares of the concern which can be easily transferred or held jointly without affecting the solidarity of the business. If the person dying happens to be one of the partners then also difficulties arise. Under S. 42, of the Indian Partnership Act, the partnership ordinarily comes to an end, very often resulting in serious complications with regard to the settlement of the share of the deceased partner, because accounts have to be gone into and the assets of the firm have to be valued, which presents lot of difficulties. More often than not the parties are driven to law courts and a business which would otherwise have continued uninterrupted comes to a standstill. In this connection Palmer has quoted the following para from Lord Lindley's works on partnership :—

“The position of the executors of a deceased partner is in fact one of considerable hardship and difficulty ; if they insist on an immediate winding up of the firm, they may ruin those whom the deceased may have been most anxious to benefit ; whilst if for their advantage the partnership is allowed to go on, the executors may run the risk of being ruined themselves. With the view to obviate this, it is not unusual for one partner to make his co-partner his executor ; but the difficulty of the executor's position is thus rather increased than diminished for his own personal interest as a surviving partner is brought into direct conflict with his duty as an executor. Everything, therefore, which he does is liable to question and misconstruction on the part of the persons beneficially entitled to the estate of the deceased ; and he is practically much more fettered in the discharge of his duties, and in the exercise of his rights, than if he had not to act in the double character imposed on him.”

In limited liability companies such difficulties never arise as the shares of the company form part of the estate of the deceased and can easily be dealt with in any manner required.

Because of the unlimited liability of all the partners of a firm, if the business runs into a loss and the firm is to be declared insolvent, then the petition for insolvency lies against all the partners of the firm. But in the case of a limited company if the business cannot be run at a profit it can be wound up without involving its managers or shareholders and probably without any stigma on their business reputation. Similarly a single individual engaged in trade is liable to be made bankrupt although his losses may be the result of misfortune, or fraud or misconduct on the part of an employee and he may not have to be blamed for it. Again where a partner of a firm becomes insolvent on account of his debts other than those contracted in connection with the firm's business, great inconvenience may be caused to the other partners as the share of the insolvent partner is to be determined, and they may also have for sometime an official receiver as their partner poking his nose everywhere affecting the reputation of the firm. All these difficulties are averted in the case of a limited company. If the requisite majority of the share holders agree, the company can be wound up voluntarily. If it is running at a loss, any shareholder can approach the Court and have it wound up by satisfying the Court that it cannot be run at a profit, or such grounds exist which would justify the dissolution of a partnership.¹

1. *Ghanshamdas v. Sassoon & Co.*, 93 I C. 448.

1. *Yenidje Tobacco Co. Re*, (1916) 2 Ch 426; *Loch v John Blackwood Ltd.*, (1924) A. c. 783; *Re Davis and Collect Ltd.*, (1934) Ch 693.

Retirement and admission of a New Partner. In case of an ordinary partnership, the right of a partner to retire from it is a limited one. He may retire :—

- (i) with the consent of all the partners,
- (ii) in accordance with an express agreement by the partners, or .
- (iii) where the partnership is at will, by giving notice in writing to all other partners of his intention to do so.

There is only one method by which a partner can retire from a firm without the consent of his copartners and that is by dissolving the firm, except where the partnership is one at will.¹ Nor does mere retirement serve the purpose of securing discharge. Under S. 32 (2) of the Indian Partnership Act a retiring partner is not discharged from liabilities by the mere fact of his retirement. He can free himself from liability incurred by the firm before his retirement only if

Retiring partner's liabilities. at the time of retirement or subsequently the partners and the creditors agree to discharge him from all liability. In other words his liability comes to an end only when there is a novation.² A retiring partner would be liable for acts of the firm even after retirement if no public notice of retirement has been given.³ In case of a private company, the retirement is effected without the least difficulty. All that a retiring member has to do is to sign a transfer of his shares in favour of the person, who takes his place. This is registered and the transaction becomes complete. No public notice is needed to complete the transaction.

Admission of a new partner. Similarly the admission of a new partner in a running business generally involves the preparation of a special deed or covenant, sometimes of an entirely new character, requiring a fresh partnership deed to be drawn up for all the partners. Besides accounts, valuations, etc. may entail endless complications in respect of liability to old creditors or for existing contracts. But in the case of a company the transaction is of the simplest character. If the new shareholder is to bring in capital (in ordinary parlance to contribute for shares) he takes shares in the company to the amount agreed on, is entered in the register of member and thereupon the transaction is complete. Where he is to take the place of some existing member, the latter signs a transfer of his share to the new member, who pays him the purchase money, the transfer is registered and the transaction is completed.⁴

C. Borrowing facilities.—In a partnership a creditor usually is not aware of the financial status or position of the firm. Many a time it has happened that when a creditor has sought to recover his dues from the firm he has found that all the assets of the firm have already been mortgaged or pledged with some bank or other creditor. In case of a limited company, however, the creditor can inspect the file of the company with the Registrar of Joint Stock Companies and he can thereby find whether there is a mortgage or charge on any such assets of the company which he thinks should be a good security for him. Further the company can issue debentures, whereby floating charge or security is created in favour of the debenture holders. If the company runs smoothly the debenture holders are secured. If the company incurs losses and comes to be in difficulties the debentures-holders' security becomes fixed and crystallised.⁵ During the period that the debenture-

1. See notes under S. 32 (1) Partnership Act under "Scope and Objects."

2. *Scarf v. Jardine*, 1882 7 App. Cas. 345.

3. S. 32 (3) Partnership Act.

4. *Palmer's Private Companies*, p. 14, 38th edition.

5. *Imperial Bank of India v. Bengal National Bank Ltd.*, 58 Cal. 136.

holders have floating security, the company is enabled to carry on its business and can borrow further sums on the security of its assets. In fact many a partnership is converted into a private limited company merely for the facilities provided for issuing debentures.

In a partnership, a creditor of the firm, who is a partner of the firm as well, is postponed to outside creditors if a competition arises between him and other creditors for realisation of their respective dues from the firm. In the case of a limited company, a member of the company ranks equally with all other creditors of the company.

Shareholder may be a creditor.

D. Management of business:—Every partner under the partnership law is the general and accredited agent of the partnership; or as it is sometimes said "each partner is *praepositus negotiis societatis*". A partner may consequently bind all other partners by his acts in all matters which are within the scope and objects of the partnership. Hence if the partnership be of a general commercial nature he may pledge or sell the partnership property; he may buy goods on account of the partnership; he may borrow money, contract debts and pay debts on account of the partnership he may draw, make, sign, endorse, accept, transfer, negotiate and procure to be discounted promissory notes, bills of exchange, cheques and other negotiable paper in the name and on account of the partnership. The rule of law is now well settled that a principal is bound by and answerable for the acts of his agent and every partner is an agent of the firm.

Each partner agent of firm.

Even though the act of a partner is fraudulent, if it is within the scope of his authority ostensible or actual, and in such a case whether fraud was committed for the benefit of the principal or for the sole benefit of the agent himself is immaterial¹. Therefore a partnership firm cannot escape liability for the act of a partner done within the scope of his authority, by merely showing that he was acting in his own interest, or was committing a fraud on the firm, if the other party has acted bonafide.² Such being the precarious position of a partner, he is at the tender mercy of his co partners as the latter are at his. A dishonest or an imprudent partner may ruin his co-partners. This evil is avoided in a private company. The directors of such a company play altogether a different role. They are special agents and have only such powers as are given to them by the articles of association or other regulations of the company which every one dealing with it is presumed to know. The powers of the managers can be curtailed effectively and chances of their injuring the interests of the company can be minimised. This in itself is an advantage of no mean degree when we bear in mind the fact, that not a few partnerships are ruined by the dishonest and imprudent acts of a partner. Administration of the business on the other hand is placed on a sounder footing, by appointment of one man as incharge of day to day work. He is vested with definite powers which are either defined by the Articles of Association of the Company or Power of Attorney executed in his favour. His work is further supervised by the directors and chances of mismanagement are eliminated. Thus the chief drawback of a partnership business being made a mess of by too many cooks is avoided and the business can be run more efficiently.

Fraudulent acts of partner.

Management's powers may be limited.

1. *Bank of Australia v. Breillat*, (1847) 6 Moo P.C. 152 at p. 176; *Saremal v. Punamchand*, 48 B. 176.

2. See Notes under S. 31(1) Partnership, Act under "Scope and Object"

3. *Scarf v. Jardine*, (1882) 7 App. Case 345.

If it is intended that the proceedings of the Directors should not be inspected by the other shareholders, it can be so arranged. While if it is considered desirable that the shareholders in a private company should be entitled to inspect, the same, the articles can provide therefor.¹ Again if the directors should misconstrue some clause in the Memorandum of Association as to application of the assets of the company, a single member of the company can maintain a suit against the company for a declaration as to the true construction of the clause in question.² A shareholder may sue to restrain the company from acting on an *ultra vires* resolution.³

If more than 20 persons join to carry on business for the acquisition of gain they cannot carry on such business without being incorporated into a company as provided under the Indian Companies' Act or unless they obtain a certificate or other authority under Letters Patent or are incorporated under a Royal Charter or an Act of Parliament. It is further provided that if any person is a member of a company, association or partnership in contravention of this provision of law, he shall be punishable with fine exceeding one thousand rupees.⁴ A partnership in contravention of the provisions of law would be illegal⁵ and of fine and responsibility for all the debts of the partnership imposed by S. 4 of the Act, it is doubtful if such a partnership will be able to enforce its claim in a Court of law against any person; because it has no legal existence.⁶ Nor does a suit for partition lie at the instance of one partner against the remaining partners.⁷ At this stage the attention of the reader may also be drawn to the facts that no two firms as such can form a partnership, and a suit or claim filed by a firm so constituted does not lie. The remedy provided for such cases is that all the individual partners of different firms constituting a partnership should be either made plaintiffs or defendants in the suit. Such being the intricacies of partnership firms it is advisable to trade through the medium of limited companies.

E. Other Advantages.—Because of the fact that the shareholders of a limited concern can change hands without let or hinderance, keeping the business operations of the concern unaffected, many other advantages accrue out of it. For instance, in the case of lunacy, extremely inconvenient position would arise in the case of partnership, requiring interference of the Court in superintendence of the lunatic's share in the business. But the lunacy of a shareholder does not effect the working of a company at all. Death duties are saved by transferring shares of concerns in one's life time to his sons or wife. Similarly arrangements for pensions and maintenance grant can easily be made by transferring preference shares.

1. *Rameswar Lal v. Calcutta W and S Association Ltd.*, A.I.R. 1938 C. 89.

2. *Bharat Insurance Co. Ltd., v. Kanhaya Lal Gauba*, A.I.R., 1935 Lah. 792.

3. *Mosely v. Koffyfontian Mines*, (1910) 2 Ch. 382.

4. See S. 4 of the Indian Companies Act.

5. *Mohideen v. Periyannayakam*, A.I.R. 1925 Mad. 233; *North Cote Ginning Factory*, 26 I.C. 613; *Naidu v. Mudaller*, 50 I.C. 513; *Dawson v. King*, A.I.R. 1939 R. 273. See, however, *Sarkar's Company Law* pp. 34-35; *Venkoba Rao's Company Law* at pp. 37-44.

6. *Shaw v. Benson*, 11 Q.B.D. 563; *Jenings v. Hammond*, 9 Q.B.D. 225; *Senaji v. Panaji*, A.I.R. 1930 C. 300; *Nibaram v. Lalit*, I.L.R. (1938) 2 Cal. 368. See also *Madan Gopal v. Shiwalw*, I.L.R. 16 Lah. 574; *Appa v. Ramakrishna*, I.L.R. 53 Bom. 652.

7. *Madan v. Janki*, 49 A. 319; *Mewaram v. Ramgopal*, 4k A 735.

Publicity. Since the Partnership Act of 1932 came into force it has become necessary for almost all firms to get certain particulars registered with the Registrar of firms giving the name of the firm, the place or principal place of the business of the firm, the names of any other places where the firm carries on business, the date when each partner joined the firm, name in full and permanent address of the partners and the duration of the firm. It is thus apparent that partner-ships are not now a close secret and the publicity which was sought to be avoided by firms in respect of non-disclosure of the names of the partners cannot be availed of now.

Litigation. At the same time it is well known that whenever suits for accounts and dissolution of partnership are fought between the partners in Court such litigation is protected for several years for the purposes of determining as to who are the real partners, what shares they had in the partnerships, whether a particular person was a partner or was a manager remunerated merely out of profits of the firm or partly out of profits and partly at a fixed monthly remuneration. The taking of accounts, the ascertainment of the partnership books and accounts also usually involves such lengthy proceeding before commissioners for examination of accounts that partners realise after spending a great deal of time and money in fruitless litigation about the undesirability of having entered into a partnership. In case of private limited company there is a very little publicity in respect of the business and internal management of the company, and the winding up of the company can be accomplished by a voluntary winding up or under supervision of or by Court.

Dis-advantages.

Like everything else the companies also suffer from certain drawbacks, which are not to be found in the case of partnerships. But these defects are so few as compared to the advantages that they do not deserve any serious consideration. Every time that the Company Law is amended attempts are made to over-come these difficulties and it is hoped that in due course of time most of the defects will be removed. Some of the disadvantages may be stated here:—

Lack of Interest. The stake of the shareholders in the business being limited, they cease to have any substantial interest in the progress of the concern, and the whole thing is left to the idiosyncracies of the managing director, whose interest is also again limited to the extent of the remuneration that he draws from the concern. So to say, the necessary zeal to build up the concern as one's own is sometimes missing.

Technicalities of law. The formalities of law in sending returns, disclosing of interest and entering into contracts with directors by concerns in which they are interested, are so numerous that omissions are likely to occur here and there, and a naive shareholder with a nominal interest can harass the management, directing their energies to litigation rather than peaceful business pursuits. But this draw-back is greatly overcome in the case of private limited companies where the formalities have been reduced to the very minimum.

Incidence of Taxation. Corporations are subject to maximum taxation, even on a profit of a single rupee made during the course of a year. This is not the case in the case of private firms as they are treated like individuals for income-tax purposes. A firm registered under S. 26 of the Indian Income-tax Act can escape taxation if its profits when distributed over individual partners are not within the taxable limits. This difficulty can also be overcome to a great extent in a private limited company by fixing adequate salaries of the principal shareholders either as directors or managers.

Expenses of Management. Sometimes the expenses involved in maintaining regular office records and employing persons to look after the legal formalities, are disproportionate as compared to the volume of the business and the expected profits.

Frauds. The public is sometimes induced to make investments in a company which in fact has no business and funds are collected by clever persons for their own consumption. The remedies in law against such frauds are yet not adequate and therefore one has to be on his guard in purchasing shares of limited concerns. The investing public should go by the reputation of the promoters and the managers rather than the high sounding schemes contained in the prospectus and aims and objects of the concern to be newly floated.

On the whole the popularity of limited companies continues to spread. There are many advantages to be derived from registration by a sincere and efficient trader, and these are too substantial to be ignored. There was a time when trading with limited companies was looked upon with suspicion, but thanks to the large number of registration by bona fide traders, as a result thereof, we now find that as a general rule more confidence is reposed in a company than in a firm, and the word limited now inspires confidence rather than mistrust. The figures as to registration of such companies are a sufficient indication of the public bent of mind and time is not far off when most of the country's business will be transacted through the medium of limited companies. The legislature has no doubt been constantly endeavouring to circumvent all the machinations of the clever, who never hesitate to take advantage of the lacuna in the law and to exploit the ignorant, but there is still ample scope for further legislation. The machinery of the law in the case of companies can only be moved through the High Courts, an approach, which is both expensive and distant in the case of small companies situated in district towns.

If the powers were transferred to the District Judges much of the difficulties would be over. Further the executive machinery, which in the case of companies is the office of the Registrars Joint Stock Companies, needs spurring up and strengthening. The powers of superintendence vested in the Registrar are so numerous and effective that if they are exercised for the benefit of the public, much good can come out of it. It will necessarily drive out some of the tricksters, who tend to impair public credit in limited companies. It should also be the function of the Registrar to guide the public in technical matters.

CHAPTER V

PROMOTION AND FORMATION OF COMPANIES

Companies are brought into existence by persons who are called promoters.

Promoters. The expression 'promoter' has not been defined¹ but a promoter may be regarded as a person who either singly or alongwith other persons, who are also designated along with him as promoters, having conceived the idea of forming a company by complying with the necessary preliminaries for incorporation of the company, provide for the preliminary expenses and bring it into existence as prescribed by law.

Fiduciary relationship. The relation of promoters with the company is fiduciary.²

Promoters have in their hands the creation and moulding of the company, they have the power of defining how and when and in what shape, and under what supervision, it shall start into existence and begin to act as a trading corporation. If they

Independent Board how far necessary. are doing all this in order that the company may, as soon as it starts into life

1. *Whaley Bridge Calico Printing Co. v. Green*, 5 Q.B.D. 109; *Twycross v. Grant*, 46 L.J.C.P.

2. *Lagunas Nitrate Co. v. Lagunas Syndicate*, (1899) 2 Ch. 392. *Gluckstein v. Barnes*, 1900 C. 240

become, through its managing directors, the purchaser of the property of themselves, the promoters, it is incumbent upon the promoters to take care that in forming the company they provide it with an executive, that is to say, with a Board of Directors who shall both be aware that the property which they are asked to buy is the property of the promoters, and who shall be competent and impartial judges as to whether the purchase ought or ought not to be made. Of course the owner of property may promote and form a joint stock company and then sell his property to it, but if he does so he is bound to take care that he sells it to the company through the medium of a board of directors who can and do exercise an independent and intelligent judgment on the transaction and who are not left under the belief that the property belongs, not to the promoter, but to some other person.¹

Promoters are of three kinds, for instance,

- (1) Those who have conceived a new project or those on account of great acuteness and sound judgment have an instinct for the flotation of a new undertaking, or
- (2) those who as professional promoters are engaged in the business of promoting companies and making profits and earning commission thereby, or
- (3) those who are carrying on business or are engaged in some manufacture and intend to sell their undertaking to a company newly formed for reasons which appear to them appropriate or as conducive to better prospects.

<p>Functions of a promoter.</p> <p>Magnitude of company</p> <p>Capital</p> <p>Valuation of assets or property to be acquired.</p> <p>Choice of first directors.</p> <p>Objects in Memorandum of Association.</p> <p>Terms of preliminary agreement.</p> <p>Payment of Preliminary expenses.</p>	<p>A promoter has to chalk out the structure of the company, whether it is to be a big concern or a small one, he must decide the type of business or work to be done by the company, the capital required therefor, the value, number and kind of shares into which the capital of the company is to be divided. He also has in view the property or the undertaking that is to be acquired for the company and the source thereof, the value to be fixed therefor and in case the property belongs to another person, he is to make an estimate of the profits that he intends to make by bringing about the sale of the property either through himself to the company or direct to the company or whether he contemplates to earn merely a commission for the transfer of the properties or undertaking in favour of the company by its erst while owner. He must make a proper selection of the persons who are to be named as the first directors of the company and in case he is selling his own property to the company he must see that such directorate can exercise an independent judgment in acquiring the property for the company from him.² He settles the terms of the Memorandum of Association and formulates Articles of Association of the company under which the company is to carry on its business and regulate its affairs. If there is any preliminary agreement to be made by the vendor of the property to be acquired by the company after its incorporation he is to settle the terms of such preliminary agreement and prepare the draft therefor. Sometimes he arranges for the undertaking of a certain part of the capital of the company so that it may commence its business at the earliest possible opportunity. He usually pays the preliminary expenses, but it must be borne in mind that in order to charge the company therefor there must be forthcoming a contract between the company and himself after its incorporation</p>
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1. *Flanger v. New Sombrero Phosphate Co*, 3 A.C. 1218, 1236, per Lord Cairns. This proposition, however, must be read subject to the remarks of Lindley M.R., in *Lagunas Nitrate Co.'s case* when the vendors are the promoters and the first directors of the company.

2. See, however, *Lagunas Nitrate Co. v. Lagunas Syndicate*, (1899) 2 Ch. 392.

sanctioning the payment for such expenses. As already mentioned, the relationship of a promoter with the company is fiduciary and therefore it is incumbent upon him to make a full disclosure about the properties which he himself intends to convey to the company at a price or his remuneration or profit which he seeks to make in respect of any sale of business or undertaking or properties effected in favour of the company through him and of all matters which a trustee is required to disclose to the beneficiary in a contract between themselves.¹

HOW TO FORM A PRIVATE LIMITED COMPANY

1. The formation of a limited company is usually visualized under two circumstances. Firstly, when a person or a set of persons draw up a scheme of business and then contribute the capital in the form of shares to push up that scheme. Secondly, when there is already a running business and the proprietor or partners want to limit their liability, thereby freeing themselves from the risks of trade and also perhaps to put the business on a well defined and permanent basis. We shall first of all proceed to describe the procedure to be adopted in the formation of private companies when starting new business.

The procedure in the initial stages both for the formation of a public and private company is the same. After the purpose for which the company is to be registered is determined, by the persons interested in its formation, a fair estimate of the amounts required for the venture should be made, keeping in view the preliminary expenses required in registering the company, the costs of furniture and other office equipments required, the investment on machinery and its erection etc., (if it is a manufacturing concern), initial amount required for purchase of goods or raw materials, and the working capital. The total amount so required would form the capital of the company and it should then be divided into shares of convenient denomination e.g., the capital of a company requiring Rs. 1,00,000 may be divided into 10,000 shares of Rs. 10 each or 1000 shares of Rs. 100 each as may be considered suitable. The implication of voting rights attached to the shares of the different classes into which they can be divided are discussed under a separate heading. It should then be determined as to how the amount of the capital is to be contributed by the promoters; whether they are to pay up at once, or by instalments, and what property if any they are required to make over to the company, and what duties are to be assigned to each of them. The provisions of law regarding calls on shares and payments for shares otherwise than in cash are also discussed in detail under separate headings.

Having settled the scheme and the capital they should proceed to draw up the memorandum of association of the company, which is the most important document on which the company is supposed to be based. The word "Memorandum" has been defined under S. 2 (10) of the Indian Companies Act., 1913, as follows :—

"Memorandum means the memorandum of association of the Company as originally framed or as altered in pursuance of the provisions of this Act."

Ss. 5 to 16 of the Act deal with the formation, contents, requirements and amendments or alterations of a Memorandum of Association of various classes of companies. Ss. 5, 6 & 9 are relevant for the formation of a private limited company. S. 5 lays down that at least two persons must subscribe to the memorandum, taking at least one share each. The mode of entering the subscribers at the conclusion of the memorandum has been indicated in S. 9 (c). It should, however, be noted that the objects of a company should be clearly set forth in the memo-

1. See Palmer Precedents Vol. 1, pp. 107 et seq. 15th Ed.

random, for a company can do only what is within, or incidental to, the objects stated therein.¹ The objects as stated in the memorandum cannot be departed from or altered except under the circumstances permitted by Ss. 10 and 12 of the Act. Consequently the contract made by the directors upon a matter not included in the memorandum is *ultra vires* and cannot be made binding on the company, even if it is expressly assented to in the meeting of the shareholders.² It is not enough to state that the object is to carry on any business which the company may think profitable, for this defines nothing.³

The purpose of specifying the objects is twofold:—

(i) The first is that the intending incorporator who contemplates the investment of his capital shall know within what field it is to be put at risk. In other words it gives protection to subscribers who learn from it the purposes to which their money can be applied.

(ii) The second is that any one who shall deal with the company shall know without reasonable doubt whether the contractual relation into which he contemplates entering with the company is one relating to a matter within its corporate objects. In other words, it gives protection to persons who deal with the company and who can infer from it the extent of the company's powers.³

In short the memorandum of association enables shareholders, creditors and those who deal with the company to know what is its permitted range of enterprise.⁴ It is the charter of the company, which defines the objects of its existence and operations. The narrower the objects expressed in the memorandum the less is the subscribers risk, but the wider such objects the greater is the security of those who transact business.⁵

The objects of the company must not, however be illegal. For instance, it is not legal for the company to purchase or to lend money to purchase its own shares. Nor is it legal to carry on a business not permitted by law (e.g. lottery).

Subject to such restrictions, the subscribers to the memorandum of association have full liberty to incorporate any objects or set of objects unconnected with one another and bring into existence the corporate life of the company endowed with the power to carry on the business of the company pursuant to such objects.⁶ But once such objects are specified in the memorandum of association, the subscribers or all the members of the company cannot of their own will or choice enlarge such objects. A company formed to carry on one trade cannot engage in another.⁷

According to S. 6 (1) of the Act, the memorandum is required to state the following:—

Contents of memorandum.

1. The name of company with 'Limited' as the last word in its name ;

1. *Ashbury Rly Carriage Co. v. Riche*, (1875) L.R.H.L. 653; *Baroness Wenlock v. River Dee Co.*, (1883) 36 Ch. D. 675 n. See also the dictum of Bowen L.J. in *Guinness v. Land Corporation of Ireland*, (1883) 22 Ch. D. 349; *Deuchar v. Gas Light and Coke Co.*, (1925) A.C. 691.

2. *Ashbury Ry. Carriage Co. v. Riche* (supra).

3. *Cotman v. Brougham*, 1918 A.C. 514; *In re. Crown Bank*, 44 Ch. D. 634.

4. *Egyptian Salt and Soda Co. Ltd. v. Port Said Salt Assn. Ltd.*, A.I.R. 1931 P.C. 182.

5. *Cotman v. Brougham*, 1918 A.C. 514; *Ashbury's case*, (1875) L.R.H.L. 653, *Re. Crown Bank*, 44 Ch. D. 634.

6. See *Wamanlal v. Scindia Steam Navigation Co.*, A.I.R. 1944 B 131.

7. *London Country Council v. A.G.*, 1902 A.C. 165; Council could not run busses. *Joint Stock Discount Co. v. Brown*, (1866) L.R. 3 Eq 139; a bill broking company cannot take shares in a banking company; *Re. Lands Allotment Co.*, (1894) Ch. 616, cannot take shares in a company doing different business.

2. The province in which the registered office of the company is to be situated ;
3. The objects of the company and except in the case of trading corporation the territories to which they extend ;
4. That the liability of the members is limited ; and
5. The amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount.

Name. The Company can be registered under any name provided that any other company has not already been registered under that name, and it also complies with the provisions of S. 11 of the Act, which is reproduced below:—

“S. 11 (1) A company shall not be registered by a name identical with that by which a company in existence is already registered or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such a manner as the registrar requires.

(2) If a company, through inadvertence or otherwise is without such consent as aforesaid registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive the first mentioned company may, with the sanction of the registrar, change its name.

(3) Except with the previous consent in writing of the Governor General in Council, no company shall be registered by a name which

(a) contains any of the following words, namely ‘Crown,’ ‘Emperor,’ Empire, Empress, Federal, Imperial, King, Queen, Royal, State, Reserve Bank, Bank of Bengal, Bank of Madras, Bank of Bombay, or any word which suggests or is calculated to suggest the patronage of His Majesty or of any member of the Royal Family or any connection with His Majesty’s Government or any department thereof, or

(b) contains the word ‘Municipal’ or ‘Chartered’ or any word which suggests or is calculated to suggest connection with any municipality or other local authority or with any society or body incorporated by Royal Charter :

Provided that nothing in this sub-section shall apply to companies registered before the commencement of this Act.

(4) Any company may, by special resolution and subject to the approval of the Central Government signified in writing, change its name.

(5) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case. On the issue of such a certificate, the change of name shall be complete.

(6) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company ; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

When a memorandum is taken to the registrar joint stock companies for registration, the office makes a search to find if any other company has been registered under the proposed name. But if inadvertently the company is registered with a similar name, as stated above, its name can be allowed to be changed. Since the memorandum and articles of association have to be printed, it is safer to write a letter to the registrar intimating the intention to adopt the proposed name, and requesting for the confirmation that no other company has already been registered under that name. It is sufficient to

mention in the memorandum simply the province in which the registered office of the company is to be situated without mentioning the particular town. The following is a typical form of Memorandum of Association when a going business is to be acquired by the company.

Place of business.

.Form

Memorandum of a private company limited by shares.

1. The name of the company is "....." Limited".

2. The registered office of the company will be situate in the province of.....

3. The objects for which the company is established are :—

(1) To acquire by purchase or otherwise and to carry on the business of Acquisition of going concern. a.....and for that purpose to enter into and carry into effect the agreement referred to in clause.....of the articles of association of the company with such modifications (if any) as may be agreed between the parties thereto.

(2) To carry on either concurrently with the above business or as a separate Addition of other trades. business any other similar trade or business of any kind, whether manufacturing or otherwise, in any part of the world.

(3) To enter into partnership or into any arrangement for sharing profits Partnership with other concerns permitted. or joint adventure with any person, persons or company, carrying on or about to carry on any business which this company is authorised to carry on, or any business capable of being conducted so as directly or indirectly to benefit this company and to acquire or join in acquiring any such business.

(4) To purchase, take on lease, or in exchange, hire, subscribe for, or otherwise acquire, and to hold and deal with any property, Acquisition of property or rights. real or personal including patents, patent rights, inventions, concessions and shares, stocks, debentures or obligations of any company and upon a distribution of assets or division of profits to distribute any such property amongst the members of this company in specie.

(5) To make, draw, accept, endorse, negotiate, discount, buy, sell and deal in bills, notes and other negotiable or transferable Negotiation of instruments. instruments.

(6) To borrow and secure the payment of money in such manner and Borrowing powers. on such terms as the directors may deem expedient and to mortgage or charge the undertaking and all or any part of the property and rights of the company, present or future including uncalled capital.

(7) To lend to any person or company and to guarantee the performance To give loan or guarantee. of any contracts.

(8) To pay for any business, property or rights acquired or agreed to be acquired by this company and generally to satisfy any Purchase of other businesses and issue of debentures. obligation of this company, by the issue or transfer of shares of the company credited as fully or partly paid up, or of debentures or other securities of this or any other company.

(9) To sell, exchange, let, develop, dispose or otherwise deal with the undertaking, or all or any part of the property of this company, upon such terms and for such price or other consideration of any kind as the company may think fit.

(10) To promote or assist in or contract with any person or company for the promotion of any company or companies, for the purpose of acquiring all or any of the property and liabilities of this company or for any other purpose.

(11) To remunerate or make donations to any person or persons whether directors, officers or agents of this company or not, for services rendered in or about the conduct of the company's business.

(12) To invest and deal with the moneys of the company not immediately required, upon such securities and in such manner as may from time to time be determined.

(13) To establish and support funds or institutions calculated to benefit employees or ex-employees of the company, or its predecessors in business or dependents or connections of such persons, and to grant pensions and allowances, and to subscribe or guarantee money for charitable objects.

(14) To do all such other things as are incidental or conducive to the attainment of the above objects.

And it is hereby declared that the word "Company" in this clause, except where used in reference to this company, shall be deemed to include any partnership or other body of persons whether incorporated or not and that the objects specified in each para of this clause except where otherwise expressed in such para shall be separate and independent objects of the company and shall not be limited or restricted by reference to the terms of any other para of these objects.

4. The liability of the members is limited.

5. The capital of the company is _____, divided into _____ shares of _____ each.

We, the several persons whose names, addresses, and descriptions are subscribed below are desirous of being formed into a company in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses and descriptions of subscribers.	Number of shares taken by each subscriber.	Witness to signatures.
1. _____	_____	_____
2. _____	_____	_____

Dated the _____ day of _____ 194.

The following forms will be found useful if the principal object is to acquire a going concern or if a particular enterprise is in view.

FORM I.

To acquire, purchase and take over as a going concern the business now being carried on by Mr. of under the name and style of along with all the stock-in-trade, rights, assets, interests, liabilities and obligations of the said concern with all its advantages, goodwill, licences and privileges (in accordance with the terms and conditions contained

in the preliminary agreement entered into between Mr.....
aforesaid and Mr....., the nominee (or trustee on behalf of
the company) and to carry the said business along with other business mentioned
in the other clauses of this Memorandum of Association.

FORM II.

To acquire, take on lease or otherwise take possession lawfully for twenty
years of the building, site, premises, undertaking, machinery, workshop, factory
and structure with all appurtenances, rights and easements connected with and
belonging to the concern, known as " " situate at
and run and worked by heretofore and to
carry on the manufacture of and other products as are
permissible under the terms of this Memorandum of Association and to
carry on such business or businesses as may be associated with or conducive to
the manufacture and sale of and such other business as
may be permissible under this Memorandum of Association.

FORM III.

To acquire whether by private treaty or by making bids at the auction to
be held in respect of the ginning factory heretofore owned and possessed by
.....and mortgaged by the said owners to.....
who have obtained a mortgage decree for sale of the said factory and to repair,
maintain, alter, improve, equip and run the said factory whether singly or in
partnership with other or others or to sell or give on lease or other contract
or otherwise dispose of the same whether as a whole or in parts

FORM IV.

To acquire whether at long lease or by purchase or by making bids at the
auction of.....squares of land advertised to be sold by theGovernment
on terms and conditions as advertised or on such modifications thereof as may
be mutually agreed upon or be imposed at the time of the auction and to
cultivate the said lands or part thereof or give on lease or otherwise dispose of
the same as may be expedient.

FORM V.

To acquire and to take over whether by submitting tenders or by making
bids at any auction or in any other lawful manner whatsoever whether singly
or in collaboration with other intending bidders, surplus military, Government
stores and appliances or other things or from other contractors and other persons
and to resell, auction or otherwise keep or dispose of the same or part thereof
for the use or benefit of the company or to alter or convert the same into such
other articles or things or manufactures as may be conducive to the interests of
the company. To combine with other or others to acquire such stores, app-
liances and things by agreeing not to compete at the first auction of such stores
and thereafter at a private auction amongst such bidders to make bids for the
said goods either in one lot or in lots and either purchase or acquire the said
goods or any part thereof or to allow any other person or persons to acquire
the same and divide and accept the profits earned thereby or to act in such
manner in relation to such stores and appliance and goods as may be deemed
expedient.

FORM VI.

To acquire, take over, or agree to take over or carry on or fulfil and
perform the contract dated.....entered into between Mr.....and the Govern-
ment (or Mr.....Contractor, or the Military Authorities) for the purpose of
erecting the building or buildings now under construction under the terms and
conditions settled in the preliminary agreement dated(or in the agreement
signed by Mr.....and Mr.....and kept with Mr.....Advocate of.....

for safe custody and identification) and to enter into such contracts as may be requisite therefor and to further sublet the contract or part thereof or enter into a further contract with other or others for the fulfilment of the original contract dated.....or to make such provision in respect of such contract as may be deemed expedient.

FORM VII.

To amalgamate with or take over or otherwise acquire the business and undertakings of.....Company Ltd. with all its rights and liabilities and to pay for the same in cash or in shares or partly in cash and partly in shares (as may be agreed upon) and for such purpose to enter into such agreements as may be requisite therefor and to make such applications as may be necessary in this behalf.

FORM VIII.

To acquire by purchase or otherwise the Patent (Copyright or Concession or Licence) described more particularly in the agreement dated.....between Mrthe owner of the said Patents and Mrthe nominee of the company, kept in safe custody for the purpose of identification with Mr.....Advocate and under the terms and conditions mentioned in the said agreement dated.....

FORM IX.

To adopt the agreement entered into between Mr.....of the one part and Mr as trustee (nominee) for the company (prior to its incorporation) dated.....and kept for safe custody for the purpose of identification with MrAdvocate and to execute such deed or deeds immediately on the incorporation of the company, as may be necessary thereof and to carry out and fulfil the terms thereof and to act in accordance therewith.

FORM X.

To acquire and take over by purchase or otherwise the rights, title and interests of Mr in the agency now held by him in his own name (in the name of the firm styled as) and pay for such rights and privileges in cash or in shares or partly in cash and partly in shares of the company (as may be agreed upon between the parties) subject to the approval of and may deposit such securities or execute such deeds of indemnity or guarantee as may be requisite therefor more effectually and acquire and carry on the work of such agency.

We give below specimen objects clauses for use of trading, manufacturing and other companies, viz. brick makers, cement, chemists, cinema and theatrical business, cotton and woollen mills, drapers and furnishers, dairy farming, engineering, goldsmiths and watchmakers, laundry, mining, motor car manufacturers, newspapers, refreshment rooms, transport, waterworks.

Brick Makers

1. To manufacture, deal in and carry on the business of brick and brick making, tiles, pipes, earthenware, pottery, china-ware, ceramic goods of all kinds, lime, cement and other building materials of all kinds.
2. To buy, keep, store, sell and deal in fuel, coal, wood and timber, lime, cement and other goods or articles which may be advantageously dealt with connection with the above objects of the company.
3. To carry on the business of contractors, carriers, dealers in artificial and other stores, whether for building or other purposes.
4. To import, export, erect, construct, pull down, restore, alter or improve, icks of any material whatsoever, structures, houses, enclosures, and other building materials of all kinds.

Cement.

5. To carry on the manufacture of cement, lime, bricks, plasters, whittings, tiles, pipes, pottery, earthenware, building requisites, china and terracota, porcelain, ceramicware of all kinds, sanitary fittings, machinery and other appliances.

6. To deal in clay, sand, gravel, minerals, coke, coal, fuel, artificial and other stones, marbles, tiles, building materials, cement and other allied products.

7. To carry on the business of transport, truck-owners, quarry owners, suppliers, general contractors, paviors, idol makers, paints, cemetery makers, builders, engineers, sanitary products and appliances, makers, suppliers and fitters.

8 To carry on the business of manufacturing chemists and building contractors.

Chemists.

1. To carry on the business of chemists, druggists, dry salters, oil and colour men, photography, paint and other colours and dealers in pharmaceutical, medicinal, chemical, industrial, and other preparations and articles, compounds, cements, oils, paints, pigments, varnishes, phenyl, drugs, herbs, dye-ware, electrical, chemical, photographic, surgical and scientific apparatus and materials and manufacturers of patent and other medicines, indigenous drugs, pharmaceutical, medicinal, chemical, industrial and other preparations and articles in which the company is entitled to carry on business and makers of all kinds of electrical, chemical, photographic, surgical and scientific apparatus and materials of hospital requisites and appliances.

2 To buy, sell, manufacture, refine, manipulate, import, export, acquire or deal in substances, apparatus and things capable of being used in any such business aforesaid or required by customers or patients or persons having dealings with the Company either by wholesale or retail.

3. To perform experiments or to assist institutions in any manner whatsoever, for the improvement, development, of chemical and allied sciences, to send pupils abroad for training, instructions, education, equipment, or such other purposes as may be beneficial or conducive to the carrying on of the objects of the company.

4. To acquire, any patent rights, or copy right or other rights, privileges, and concessions which may be found expedient to assist or to be of use directly or indirectly in carrying on the said objects of the company.

5. To manufacture, buy, sell and deal in mineral waters, wines, cordials, liquors, soups, and other restoratives or refreshments suitable or deemed to be suitable for invalids and convalescents.

6. To assist, promote, establish and contribute to manage, control or support sickfunds and any associations or institutions upon any terms and conditions, and provide for medicines, drugs, medical and surgical appliances and apparatus and restoratives and refreshments during sickness or illness.

7. To prepare, store, manufacture, import or export, indigenous medicines, to render services through doctors or hakims to customers or other persons, to contract, maintain and alter any building or works or acquire in any manner whatsoever any land or buildings necessary or convenient for the purpose of the company.

Cinema & Theatrical Business.

1. To carry on the business of cinematograph film producers, exhibitors and distributors, theatrical performances, circus, plays, open air theatre, jugglery, shows, symposiums, dances, musical entertainments of all kinds, amusements, games (indoor and outdoor), exhibitions and sport matches, etc. etc.

2. To purchase, acquire, lease or sub-lease or by way of licence or usufructuary mortgage or in exchange or as a donee, transferee or in any other lawful manner whatsoever lands, buildings, structure, open space, surface rights and other places etc., for the purposes of the company.

3. To purchase or otherwise acquire the land and buildings thereon known as "....." at heretofore used as for the purposes of the company, and to maintain, reconstruct, refurnish and re-erect whether wholly or in part the said buildings or to alter or add to the said buildings or premises for the purpose of and more beneficial use of the said company, and if necessary to sell or transfer or otherwise dispose of the said premises or any part thereof for better or more economical use of the other properties of the company.

4. To build, erect, construct, furnish or refurnish, acquire, maintain and improve any building, structure, edifice, hall, enclosure, studios etc., for the use of the company its employees, actors, players or other persons connected with the affairs or business of the company or businesses subsidiary to the main objects of the company.

5. To carry on the business of film manufacturers, film apparatus manufacturers, film producers (both sound and silent) proprietors of hippodromes, circus, cinema halls, theatres, picture palaces, studios, or managers of such buildings, undertakings, or business or to carry on the business of letting or subletting the use of machinery, apparatus, studios, halls, buildings or other structures for the purpose of use, exhibition, display of films, dramatic or theatrical performances, concerts or other entertainment or amusement, and to provide for the production, direction, exhibition, representation, display, whether by mechanical means or otherwise of plays, open air or other theatrical performances, operettas, burlesques, vaudevilles, ballets, pantomimes, jugglery, mesmeric, yogic, hypnotic, snake charming and other performances, spectacular pieces, mushairas, symposium and other musical and dramatic performances, both public and private.

6. To carry on the business of arranging, organising, exhibition of or in respect of circus, sport, games (both outdoor and indoor), concerts, and other entertainments of all kinds and amusements both in public and private.

7. To recruit, train, educate, employ and bring up actors, singers, players, trainers for the purposes of production, exhibition, display of film, dramatic or other performances of all kinds. To invite experts from foreign countries or to send persons abroad for such training, education, and learning the art, skill, methods of acting, singing, managing, organising, directing of the business of the company and allied businesses.

8. To carry on the business of photography, photo mechanical processes of reproduction, representation, manufacture of photographic goods and appliances, chemicals, lenses, and other apparatus in connection therewith, import and export sale and purchase of such goods.

9. To carry on the research work in connection with the business of the company and for such purpose to subsidize, instal, open, maintain, institutions for experimental work in connection therewith. To construct, equip, acquire laboratory or laboratories or scientific measures and to organise and subsidize expeditions whether inside or outside the country, whether in air or underground for and in connection with the business and the attempt to improve the business of the company, or managers of all or any of the above or allied businesses that may be useful for or may be conducive to the objects of the company.

10. To enter into agreements with authors or assignees owners of copyright respect of films, stories, operas, operettas, burlesques, poems, dramas, compositions, musical performances, songs, records, ballets or other musical, dramatic performances, or to hire the same or acquire temporarily or permanently such rights or interests.

11. To make, manufacture, purchase, import, sell, export, hire or otherwise dispose of any records or other material for recording songs, poem or other pieces of entertainments and publish books, pamphlets, or other periodicals, magazines, journals or other papers and for such purpose to own, purchase, manufacture, deal with or acquire any machinery, building, raw material goods, motor generators, electric machinery, electric and other fixtures, instruments, optical, photographic, chemical and other necessary or useful accessories and goods.

12. To enter into contracts, submit tenders, purchase, rights and interests of persons and retain, maintain, perform or fulfil the same in connection with all or any of the businesses of the company or in connection therewith. To buy off, or otherwise lawfully acquire the rights of any competitors, or probable competitors in respect of the business of the company. To amalgamate with or buy the shares or debentures of any other company having or carrying on similar business or allied business. To enter into partnership with any person or persons or firm having similar or allied business.

13. To make, manufacture, sell, import, hire or otherwise use or deal with gramophones, phonographs, sound or silent, or television films.

14. To organise, display, advertise, direct, perform or manage outdoor, travelling, ariel cinema or theatrical or dramatic shows or performances in sports and games or open exhibitions at any place or places and to educate, inform, cultivate the taste of the public for such shows or performances in any manner whatsoever.

15. To compose, print, lithograph, or by block making or engraving or by any other measures or methods whatsoever, music, pieces, plays, paintings, programmes, new games, inventions, devices for amusement of all or any kind whatsoever.

16. To carry on the business of restaurant keepers, hotel keepers, wine, spirit and general merchants, caterers, stall keepers, printers, publishers, amusement library owners, box office keepers, concert room proprietors.

Cotton and Woollen Mills

1. To manufacture, cotton, woollen and silk goods of all kinds and to carry on all or any of the following businesses :—

2. Cotton, woollen and silk spinners, and doublers, flax and jute spinners, wool combers, worsted spinners, linen manufacturers, worsted stuff manufacturers, drapers, flex, hemp, jute, wool and silk merchants, bleachers and dyers and makers of vitriol, bleaching and dying materials, growers of mulberry or other trees and producers of any other articles or thing whether by cultivation or afforestation or by any other mechanical or chemical power or appliance for the purpose of obtaining silk, woollen, cotton or any other material to be converted into cloth, wool-combers, importers, and exporters, sheep or other animal breeders.

3. To purchase or acquire, comb, prepare, spin, dye and deal in flex, hamp, jute, woollen, cotton and silk and other fibrous substances and to weave or otherwise manufacture, buy and sell and deal in linen, cloth, yarn, manufacture fibrous products and other goods and fabrics, whether textile, felted, netted, or looped and to supply power.

4. To manufacture and deal in appliances, accessories and other materials for use in any of the aforesaid or allied businesses.

5. To carry on the business of manufacturers of and dealers in water proof materials and fabrics, mattings, or other cloth or goods of all kinds, whether imitation, leather, rubber or other newly invented material.

Drapers, Furnishers, General Store Keepers, etc.

1. To carry on the business of drapers and cloth merchants, warehouse men, furnishers, outfitters and general storekeepers.

2. To carry on all or any of the business of silk merchants, silk weavers, cotton goods dealers, spinners, cloth manufacturers, furriers, haberdashers, hosiers, manufacturers, importers and wholesale and retail dealers of and in textile fabrics of all kinds, exports, woollen goods dealers and manufacturers, dress makers, tailors, hatters, clothiers, general fitters, gloves, lace manufacturers, durrie and carpet manufacturers and dealers, suit case manufacturers and dealers feather-dressers, boot and shoe makers, manufacturers and importers of wholesale, and retail dealers of and in leather goods, house-hold furniture, iron-mongery, turnery, and other house-hold effects and things and utensils, ornaments, stationery and fancy goods, dealers in provisions, drugs, chemicals, bicycles, tricycles, perambulators and other articles and commodities of personal and household use and consumption and agents of any manufactured goods, materials, provisions and produce.

3. To carry on all or any of the business of house-decorators, furnishers, sanitary engineers, scientific appliances, fitters, electrical, mechanical, engineers and contractors in all their branches, coach and carriage builders, saddlers, suppliers of things and articles and produce transporters of goods and passengers, land and estate and house-agents and commission agents, suppliers, contractors, auctioneers, cabinet makers, warehouse men, storekeepers and dealers in toilet, perfumes, soap, plated and plastic goods, jewellery, ornaments, curios, paintings and other articles required for ornaments, recreation or amusement, gold and silversmiths, booksellers, photographers, dealers in musical instruments, refreshment and bar contractors, restaurant keepers, hotel, boarding and lodging house keepers, licenced victuallers, wine merchants, tobacconists and dealers in minerals, aerated and other liquors whether intoxicating or not, farmers, dairymen, markets gardens, horticulturists, nursery men, and florists, letting of furnished and unfurnished houses, flats or apartments with or without servants or other accessories or convenience.

4. To buy, acquire, sell, manufacture, alter, repair, exchange or let on hire, or on hire purchase agreement, export, import and deal in all kinds of articles and things which may be required for the purposes of any of the aforesaid business or commonly supplied or dealt in by persons or companies or firms in which such business is carried on may seem capable of being profitably or usefully dealt with or in connection with any of the aforesaid or similar business.

5. To carry on the business of co-operative stores and general suppliers in all its branches.

6. To manufacture, or deal in goods or articles which may be conducive to or which can be conveniently carried on alongwith the aforesaid objects of the company.

Dairy Farming

1. To purchase, acquire, keep, maintain, breed, sell or otherwise, dispose of all kinds of cattle, cows, buffaloes, pigs, poultry, game and live or dead stock of other description.

2. To carry on the business of dealers in and purchasers of dairy farm, garden and other produce of all kinds and in particular milk, cream, butter, ghee, cheese, poultry, eggs, fruits, vegetable oils, vegetable ghee, artificial ghee, cornpies, sausages, brawn, potted meat, table delicacies, loaves, bread, etc. etc.

3. To carry on the business as farmers, house keepers, millers, gardeners, agriculturists, horticulturists, goat keepers and as manufacturers of all kind of condensed milk, jam, pickles, ciders, preserved foods of all kinds and such other articles as may conveniently be produced or manufactured in connection with the carrying on of the other businesses of the company.

4. To manufacture appliances, apparatus, implements, which may be useful for or conducive to the carrying of the said business or trade. To import and export, improve, experiment, make research in breeding, growing, manufacturing of any kind of cattle produce or articles which may be usefully or beneficially or with convenience be carried on alongwith other objects of the company.

Engineering.

1. To carry on the business of mechanical engineers, manufacturers of machinery, implements of all kinds, tool makers, iron founders, brass founders, metal-workers, boiler makers, mill-wrights, machinists, iron and steel workers, smith metalurgists, wood workers, builders, water work engineers, electrical engineers, contractors, suppliers of goods of all kinds.

2. To deal, export or import, in pharmaceutical and chemical manufacturers, minerals, metals, machinery, implements, rolling stock, hardware and machinery of all kinds.

3. To acquire licences, privileges, or exploration of minerals and to carry on any business relating to the winning and working of metals, the production and working of metals and the provision, manufacture of proper storage, disposal of any other minerals which may be useful or conveniently be combined with the engineering or manufacturing business of the company or any contract undertaken by the company and for the purpose only of such contracts or as an independent business.

4. To act as contractors, suppliers, importers, and exporters of goods and manufactures of all kinds, and to buy, sell, manufacture, repair, convert, alter, let on hire or on hire purchase agreement, or on lend lease agreement, any goods or articles whether manufactured by the company or partly manufactured by the company and partly by other person or company or firm.

5. To undertake and execute contracts, or adventures, or works involving the supply and use of any machinery and to carry out any ancillary or subsidiary or other works, comprised in such contracts or works.

6. To do or execute any other work which may seem to the company capable of being done or carried on in connection with the above objects of the company or otherwise calculated directly or indirectly to enhance the value of any of the company's property and rights for the time being. . . .

7. To make experiments, and assist institutions, directly or indirectly for the advancement of science of engineering, whether mechanical, electrical or otherwise.

Goldsmith and Watch makers

1. To carry on the business of jewellers, goldsmiths, silversmiths, jem merchants, watch and clock makers and repairers, electroplaters, dressing bags and other toilet goods manufacturers, dealers, diamond cutter and dealers in curiosities.

2. To import, export and deal in (wholesale and retail) gold, bullion, metals, precious stocks, diamond, jewellery, watches, clock, gold and silver plates, electroplate, cutlery, dressing bags, toilet requisites, presents, bronze articles or other objects of art, curios, watches, clocks, cronometers, scientific and musical instruments, sari-borders, saris, benares silk, drapery, boots and shoes and other articles, goods or things as the company may consider capable of being conveniently dealt with in respect of its manufactures, trade and business.

3. To establish factories, institutions, concerns or other undertakings for the manufacture of goods in which the company, under the objects mentioned above, considers it expedient to deal, to establish home and village industries in connection with the production, manufacture, supply of the said articles, to manufacture appliances and apparatus for the production, manufacture of

machinery useful or beneficial to the carrying on of the objects of the said company.

4. To receive and accept deposits and act as bankers, agents and general merchants.

Laundry

1. To carry on at.....and elsewhere the business of electric, steam and general laundry and to wash, clean, purify, scour, bleach, wring, dry, iron colour, dye, darn, sew, disinfect, renovate, prepare for use, all articles of wearing apparel, household, domestic and other linen and cotton, silk, artificial silk and woollen goods and clothes and fabrics of all kinds and howsoever made or manufactured and to buy, purchase, acquire, sell, store, hire, manufacture, prepare, let on hire, alter, improve, treat, and deal in all apparatus machines, materials and things which are capable of being used for any of the aforesaid purposes.

2. To carry on the business of drapers, fancy or other trades, suppliers or hirers or proprietors of swimming and other baths, wash houses dress-makers and such other business or trades which may conveniently be carried on along-with afore-mentioned business of the company.

Mining Companies.

1. To buy, take on lease. or under a licence, concession, grant, or otherwise acquire any mines or mining rights in any land or other place and metaliferous land in the district of _____ or elsewhere and any interest therein and to explore, work, export, develop, turn to account the same.

2. To crush, win, get, quarry, smelt, caline, refine, dress, amalgamate, manipulate and prepare for market, ore, metal and mineral substances of all kinds, and to carry on any other metalurgical operations which may seem conducive to any of the objects of the company.

3. To buy, sell, manufacture and deal in minerals, coal, plants, machinery, implements, appliances, conveyances, provisions and things capable of being used in connection with the metalurgical operations or required by workmen and other employees of the company.

4. To acquire, construct, carry out, maintain, alter, employ, manage, work, control and superintend any roads, ways, tramways, railways, bridges, reservoirs, water courses, aqueduct, wharves, tanks, dams, furnaces, mills, crushing works, hydraulic works, electrical works, factories, warehouses, shops, co-operative stores, restaurants and other conveniences and works, which may seem directly or indirectly conducive to any of the objects of the company and to contribute to, subsidise or otherwise aid or take part in any such operations.

5. To carry on the business of manufacturers and dealers in chemical goods, mineral waters, distillers, dye makers, metalurgists and in any other similar or ancillary objects or articles which may be of use to or profitable for the company.

6. To search for ores, minerals, mines, and grant licences for mining things or offer any lands or places which may be acquired by the company and to lend any such land or place for agriculture, building or otherwise, to sell or otherwise dispose off any lands, mines or other property of the company.

7. To deal and sell iron, stone, bricks, earth, mica, lead, tin, copper, graphite, asbestos and other material and mineral substances, and to manufacture and sell petrol, fuel, goods, by products or other products.

Motor Car Manufacturing Company and Motor Dealers

1. To carry on the business of motor dealers, hirers, repairers, manufacturers, cleaners, and storers (whether in bonded condition or otherwise),

exporters, importers, retail or wholesale dealers of motor cars, motor vehicles, cycles, motor-cycles, motors, motor-boats, motor-launches, motor-ships, motor-lorries, motor vans, aeroplanes, airships, sea planes, helicopters, rollers, omnibuses, motor cabs, tricycles, velocipedes, submarines, balloons, parachutes, carriages, or other vehicles or conveyances of all description, whether fitted with or propelled or assisted by means of oil, gas, petrol, steam, electrical, magnetic, mechanical, atomic, animal or other powers, or energy.

2. To carry on the business of iron-founders, mechanical engineers, machinists, manufacturers, dealers, importers and exporters, of all kinds of implements, tools, gas generators, engines, tyres, rubber goods, tubes, bodies, chassis, carburetors, magnets, silencers, radiators, sparking plugs, paraffin vaporizers, speedometers, self-starters, gears, wheels, parts and accessories of all kinds which may be useful for or conducive to the carrying on of the business of the company.

3. Manufacture, buy, sell, exchange, alter or improve, give on hire or hire purchase agreement and deal in vehicles of any kind; construct, repair, alter, purchase, acquire, import or receive and to manipulate, improve, repair for market and otherwise deal in all kinds of plants, machinery, parts, tools, utensils, substances, materials and things necessary or convenient for carrying on any of the above specified businesses or usually dealt in by persons engaged in the like trade or business.

4. To carry on the business of transport of goods and passengers, of electrical and mechanical engineers, garage occupiers, and suppliers of and dealers in petrol, gas, electricity or other motive power, of painters, metalurgists, fitters, founders.

5. To organise, arrange, exhibit, races and other competitions and to develop scientific knowledge in respect of the manufacture of vehicles, parts and accessories as may be conducive to the attainment of the aforesaid objects.

6. To act as agents of Motor Insurance Companies, to introduce insurance business with respect to cars, motor vehicles or other vehicles appertaining to fire, accident, indemnity and general insurance or reinsurance and third party risk.

7. To train people for driving, mechanical engineers, electrical engineers, cycling, aviation, navigation, as may be conducive to or beneficial for advancement of the interest of the company.

Newspapers.

1. To carry on business of proprietors and publishers of newspapers, journals, magazines, periodicals, books and pamphlets and other literary works and undertakings.

2. To carry on all or any of the businesses of printers, publishers, stationers, lithographers, type foundry, stereotypers, electrotypers, photographic printers, photo lithographers, chromo-lithographers, engravers, dye sinkers, book-binders, designers, card printers, calendar printers, translators, paper and ink or other stationery goods manufacturers, book sellers, advertising agents, engineers, contractors and dealers in or manufacturers of or importers and exporters of any other articles, goods, finished or unfinished or other things of a character or kind similar or analogous to the foregoing or any of them or connected directly or indirectly with them.

3. To collect, supply and disseminate, inform or open information or marriage bureaus, to employ correspondents, authors, writers and others and to pay for news information, caricatures, articles, copy rights of publication, and translation and other rights in respect of any literary, scientific, artistic or other matter and to publish the same or to dispose of the same, to act as agents or contractors, to investigate or enquire into any matter or

occurrence, to sell intelligence, information or tender advice on payment or otherwise in matters financial, legal, scientific, commercial, sociological or religious.

To establish competitions in respect of puzzles, anagrams, cross-words, etc., etc., suitable for insertion in any publication of the company to hold or promote competitions of any description authorised by law, which may be calculated to enhance or increase the business of the company or may be beneficial to the company or to advertise or promote the sale of any publication of the company or of any other person and to offer and give prizes, rewards, compensations and premia in connection with such competitions or otherwise and to give scholarships, privileges, advantages, rights, bonuses, or rewards of any other kind whatsoever for the purpose of the company and on such terms as the company may deem fit.

To manufacture goods, articles, printing material, appliances and other apparatus or machinery which may be used for the company or in connection with any other business which the company may be entitled to carry on.

To work a printing press, and allied machinery either by hand, oil, steam, electricity, motor, mechanical or any other power newly invented or formed or otherwise and for the purpose thereof to construct, erect, lay down, establish, fix and carry out all necessary cables, wires, lines, lamps and works and to generate, produce, accumulate, store, distribute and use electricity for the purpose of light, heat, motive power or otherwise.

To purchase, or otherwise acquire, either wholly or in part and to print, publish, edit newspapers, magazines, pamphlets, journals, dailies, reviews, pictorials, annuals, supplements, biographies, autographies, books, treatises, pictures, circulars, encyclopaedias and other literature or works and publications and to carry on business as advertisers, advertising agents, bill posters, and to deal in pictures, photographs, autographs, paintings, pictorial post cards, calenders, diaries, stationery, artistic goods, artistic materials and to act as picture frame makers, photographers, artists, sculptors, painters, decorators, circulating library keepers.

Refreshment Rooms.

1. To carry on the business as refreshment contractors, managers or keepers of restaurants, refreshment room proprietors, refreshment caterers and contractors in all its branches. To carry on the business as merchants, importers of all refreshment and consumable stores and provisions.

2. To carry on the business as bakers, confectioners, halvais, milk sellers, dairy produce sellers, butter sellers, ghee sellers, dairymen, grocers, poulterers, farmers, wine and liquors sellers, both whole-sale and retail, agriculture, manual and other aerated water and suppliers, tabbaconists, ice merchants, manufacturing chemists, outdoors picnic caterers etc., etc.

3. To manufacture, purchase, sell, acquire, refine, grow, import and export and deal in provisions of all kinds which may be required for the carrying on of the business of the company.

4. To erect, construct, establish and provide all kinds of conveniences, improvements, entertainment for customers and others and in particular reading, cinemas show, lockers, safe deposit, stables, telephone, telegraph, clubs, stores, provisions, shops, lodgings, baths, swimming pools lavatories.

Transport Companies.

1. To carry on the business of transport of goods or passengers from place to place either by air or by land or sea or partly through sea and partly by land:

or air whether in aeroplanes, motor vehicles, animal drawn vehicles, cycle cars, ships, byplanes or in any other manner whatsoever and to carry on all or any of the following businesses, *i.e.*, general carriers, transporters, railway and forwarding agents, ware-housemen, storekeepers, bonded carmen and common carmen, and any other business or trade, or manufacture which can conveniently be carried on in connection with the above.

2. To own, establish, run, any kind of workshop, foundry or factory for the purpose of making, repairing, altering, or otherwise treating any vehicles, planes, ships or other articles, which may be used or would be used in connection with the aforesaid businesses.

3. To run omnibuses, tramways, cycle, cars, tongas, gaddas, rail-motors or other means of transport of all kinds and on such lines as the company may think fit.

4. To carry on the business of manufacture of motor omnibuses, cars, vehicles, trucks, cycle cars, ships, boats, aeroplanes of all kinds, whether propelled or moved by electricity, steam, oil, vapour, atomic energy or through motive or mechanical power.

5. To carry on the business of mechanical and electrical engineers and contractors.

6. To acquire, store, purchase, sell, distribute, import, export any kinds of merchandise, machinery, appliances, goods or articles which may directly or indirectly be dealt with in or pertain to the business of the company or such other business as may conveniently be carried on with the aforementioned businesses of the company.

Water Works Company.

1. To supply any building or buildings or any locality suburb or town with drinking or other water or for the purpose of irrigation of garden or for any other purpose whatsoever.

2. To construct, build and maintain, lay down, sink, dig, wells, shafts, banks, rivers, water works, cisterns, culverts, filters, beds of the main and other pipes and appliances and to do and execute other works and things necessary, expedient or convenient for obtaining, storing, selling, distributing, delivering measuring, water or otherwise for the purposes of the company.

3. To undertake, execute, develop, improve and otherwise deal with drainage scheme, water carriers, water suppliers, establish laboratories or experiment, make research and to treat water for different purposes for the consumption of human beings, cattle or to run machinery or to combat disease or epidemics.

4. To manufacture digging appliances, implements, machinery and other apparatus useful for or conducive to the aforesaid objects of the company.

5. To undertake, dig, construct canals, mines, underground passages, tunnels over ground reservoirs, water tunnels as may be useful for supplying water for the purpose of agriculture, horticulture, dairy farming, mechanical energy.

We also give below a few other objects clauses one or more of which may usefully be added as desired.

(1) To carry on businesses of carriers by land or water, of managing agents, secretaries, shipping agents, insurance agents, or manufacturers, mineowners, mercantile agents and any kind of commercial, financial and agency business.

(2) To carry on all or any of the businesses usually carried on by zemindars or land companies, and to irrigate, cultivate, improve, and develop any lands and properties whether belonging to the company or not, and to develop the resources thereof by

clearing, draining, fencing, cultivating, planting, manuring, farming, letting, or otherwise, with power to advance money to other persons for any of the purposes aforesaid.

(3) To take on lease, hire, purchase or acquire by licence or otherwise any lands, plantations, rights over or connected with lands, mills, factories, plants, buildings, works, vessels, boats, barges, launches, lorries, cars, wagons, carts, machinery, apparatus, stock-in-trade, patents, inventions, trade-marks, rights, privileges, in movable or immovable property of any description, which may be deemed necessary or convenient for any business which the company is authorised to carry on.

Acquisition of undertakings.

(4) To erect, construct, work, maintain, improve, or alter, or assist in the erection, construction, working, maintenance, improvement or alteration of any mills, factories, plant machinery, works, railways, tramways, sidings, jetties, wharves, bridges, roads, ways, water-works, tanks, wells, reservoirs, aqueducts, canals, vessels, boats, barges, launches, lorries, cars, wagons, carts and other works and conveniences and to contribute to the expense of constructing, improving, maintaining and working any of the same and to pull down, rebuild and repair any of the same

Construction of works and buildings, etc.

(5) To lease, let out on hire, mortgage, pledge, sell or otherwise dispose of the whole or any part of the undertaking of the company, or any lands, business, property, rights or assets of any kind of the company or any share or interest therein respectively, in such manner and for such consideration as the company may think fit, and in particular for shares, debentures, or securities of any other corporation having objects altogether or in part similar to those of the company.

To lease out or sell undertaking or property.

(6) To pay any premia or salaries and to pay for any property, rights or privileges acquired by the company or for services rendered or to be rendered in connection with the promotion of the business of the company or the acquisition of any property for the company or otherwise, either wholly or partially in cash or in shares, bonds, debentures, or other securities of the company, and to issue any such shares either as fully paid up or with such amount credited as paid up thereon as may be agreed upon, and to charge any such bonds, debentures or other securities upon all or any part of the property of the company.

To pay for privileges.

Common Objects Clauses

There are a few other objects clauses which are included in the Memorandum of Association of almost every company. If any of the said clauses is not required, it may be excluded from the objects clauses of the memorandum.

1. To pay all or any costs, charges and expenses preliminary and incidental to the promotion, formation, establishment and registration of the company.

Payment of preliminary expenses.

2. To purchase or otherwise acquire and undertake all or any part of the business, property and liability of any person or corporation carrying on any business, which the company is authorised to carry on, or possessed of property suitable for the purposes of the company.

Acquisition of similar undertakings.

3. To promote any other company for the purpose of acquiring all or any of the property of this company or advancing directly or indirectly the objects or interests thereof, and to take or otherwise acquire and hold shares in any such company, and to guarantee the payment of any debentures or other securities issued by any such company.

Promotion of companies.

4. To take or otherwise acquire and hold shares in any other company having objects altogether or in part similar to those of this company, or carrying on any business capable of being conducted so as directly or indirectly to benefit this company.

Acquisition of shares
of other companies.

5. To enter into partnership or into any arrangement for sharing profits, union of interests, co-operation, joint adventure, reciprocal concession or otherwise with any person or company carrying on or engaged in or about to carry on or engage in any business or transactions which this company is authorised to carry on, or engage in any business or transactions capable of being conducted so as directly or indirectly to benefit this company, and to take or otherwise acquire and hold shares or stock in any such company.

To enter into partner-
ship with other con-
cerns.

6. To draw, make, accept, endorse, discount, execute and issue cheques, promissory notes, bills of exchange and other negotiable or transferable instruments.

Negotiation of instru-
ments.

7. To invest moneys of the company not immediately required upon such securities as may from time to time be determined.

Investment of surplus
capital.

8. To lend money to such persons and on such terms as may seem expedient, and in particular to customers, of and to other persons having dealings with the company, and to guarantee the performance of contracts by members of or persons having dealings with the company.

To lend monies of
company.

9. To appoint agents and managers and constitute agencies of the company in India or in any other country whatsoever.

To appoint agents.

10. To borrow or raise or secure the payment of moneys in such manner as the company shall think fit and in particular by the issue of debentures, charged upon all or any of the company's property (both present and future) including its uncalled capital and to purchase, redeem, or pay off any such securities.

Borrowing powers.

11. To pay brokerage or commission to any person or persons in consideration of his or their subscribing or agreeing to subscribe, whether absolutely or conditionally for any shares or debenture of the company, or procuring or agreeing to procure subscriptions whether absolute or conditional for the same, which brokerage or commission may be paid either in cash or in debentures or shares of the company credited as fully or partly paid up.

To pay commission.

12. To grant pensions, allowances, gratuities, bonuses and advances to employees or ex-employees of the company or the dependents of such persons, and to support or subscribe to any charitable or other institutions, clubs, societies, funds or objects.

To grant pension
and bonus.

13. To distribute any of the company's property among the members in specie.

Distribution of property
in specie.

14. To do all or any of the above things in any part of the world, and either as principals, agents, contractors, trustees, or otherwise, and either alone or in conjunction with others, and by or through agents, sub-contractors, trustees, or otherwise.

To act as agents or
contractors.

15. To do all such other things as are incidental or as the company may think conducive to the attainment of the above objects or any of them.

Alternative common object clauses from which a selection may be made as desired.

1. To carry on the business of _____ and such other business and businesses or trade as may be beneficial or useful for carrying on the said business or trade or which may be conducive to the same or which may be profitably carried on along with the aforesaid business or trade, being of the same nature or which are usually carried on by other companies, undertakings or concerns similar to that of this company.

2. To carry on along with the aforesaid business or businesses such other business or trade which, without detriment to the main objects of the company, may be conveniently carried on either to use more effectually or utilize, assets or services available to the company or which though not connected with the main objects of the company may advantageously be carried on whether for the purpose for maintaining or retaining clientele, customers or business of the company or to sustain or bear the competition in the market or to avoid, restrict and obviate competition in the market and which is calculated directly or indirectly to serve the interest of the company and may be more beneficial to it.

3. To manufacture such other products, things, articles, appliances, machinery and goods which may be conducive to the main objects of the company or which though not connected with the main objects of the company may be useful or beneficial for the company or which is manufactured by the other similar companies in the market whether in India or abroad.

4. To acquire whether by purchase or otherwise any other business or undertaking or part thereof with such liabilities, obligations or privileges as may be agreed upon and to keep the same or to dispose it off or partly retain the benefit of such requisition and dispose of the other part and portion thereof under such terms and conditions as may be deemed fit.

5. To take over, acquire and obtain the assets, business, goodwill or undertaking of any other company, person or firm or to arrive at arrangement with or to act in union with or to amalgamate with other company and carry on business or manufacture jointly or otherwise as may be conducive to and beneficial for such combination or concern or the company in such state of union or co-ownership or to enter into pooling or such other arrangement to obviate competition or loss or depreciation of the assets of the company with any other company or companies or concerns or person as may be considered expedient or necessary or advantageous to the company.

6. To assist, promote, aid or subscribe to the establishment and maintenance of any institution, association, fund or charity for the benefit and use of the employees and ex-employees of the company and to grant gratuity, bonus, pension, privileges, relief and other emoluments to them and their dependents and to provide for their welfare, convenience, entertainment, amelioration, education, development and assurance of the said employees and their dependents or those who may have any moral claim on such employees or ex-employees. To provide for or assist all those who may have suffered or may be suffering or expected to suffer in connection with affairs of the said company or in the environment, vicinity or neighbourhood of the said company. To encourage, donate or otherwise aid benevolent society, institution and association for the uplift of the employees, ex-employees and their family members and their associates or relations.

7. To pay or enter into bond or agreement or other arrangement for payment of all costs, charities, expenses and liabilities or obligations incurred or sustained in or in respect of the promotion, floatation, registration and establishment of the company or in connection with the

inauguration of the offices and branch offices or agencies of the company and in performing the opening or other inaugural ceremony or to pay or adjust the under-writing commission, brokerage, printing development or such other expenditure as the directors of the company may consider as preliminary expenses.

8. To purchase or otherwise acquire share of other companies or debenture or debenture stock or other stocks of companies carrying on similar business or businesses analogous to the objects of this company or of any other company and to retain the same or dispose of or deal or sell the same or part thereof as may be advantageous to the business or interest of the company.

9. To promote any other company or companies for the purpose of acquiring any privilege, concession, property or asset of any person, firm or undertaking or other rights and liabilities of such other company or companies or concerns or businesses as the case may be as may be conducive to or beneficial for the purposes of the company.

10. To invest, withdraw and re-invest or deal with the fund or other moneys of the company which may not be required by it for the time being or which may be usefully applied in such investment whether secured and unsecured.

11. To borrow or otherwise take on loan whether on promissory note, bond, hundi, bill of exchange or other security for the purposes of the company or to guarantee any debt or loan advanced to any other person or company as may be considered necessary whether directly or indirectly to carry on or advance the business of the company. To issue debenture or debenture stock on the security of assets or other undertaking of the company or on the security of uncalled capital of the company as may be found necessary or expedient in the interest of the company.

12. To advance loan to such person or persons or other company whether on security or otherwise as may be conducive to the interests of the company.

13. To draw, accept, discount bills of exchange, cheques, hundies and to make execute or issue promissory notes or cheques or other negotiable instruments or to accept, condorse any bill of lading, warrants or debenture or other transferable instrument for and on behalf of the company.

14. To sell or dispose of or otherwise deal with the undertaking or part thereof of the company for such consideration as may be appropriate and in particular for shares, stocks, debenture or securities of any other company having objects similar to the objects of this company. To acquire, sell, dispose of, lease, mortgage, exchange or otherwise deal with the assets and properties of the company.

15. To purchase, build, construct, demolish, furnish, improve, maintain, develop any lands, buildings, appurtenances, works or other things as may be conducive to the business and working of the company.

16. To obtain or make arrangement for the obtaining of or passing of any Act or Order of the legislature or other law or rule or bylaw making body which may be necessary or advantageous for the carrying on of the business or manufacture of the company and make such objections or take such proceedings as may be calculated to advance the said objects of the company.

17. To distribute in specie, if so considered fit, among the members of the company, any assets or properties of the company including its shares, debentures, debenture stocks or other securities of any other company

formed to take over the whole or any part of the assets, properties or liabilities of this company.

18. To establish, maintain and promote any agency or branch offices of the company in India or elsewhere and to regulate the same or discontinue the same.

19. To sell or sublet or otherwise dispose of any licence, privilege, concession or contract entered into by the company or to enter into any agreement with any other company in connection with undertaking and business of the company to any other company having objects similar to the objects of this company.

20. To enter into any agreement or arrangement with any authority, government, local body, port-trust or other institution, provincial or otherwise which may be considered beneficial for or conducive to the objects of the company or any of them and to obtain from such authority or authorities any concessions, privileges, or licences and to sublet or dispose of the same or exercise any right relating thereto as may be beneficial to conducive to the objects of the company.

21. To remunerate any person or company in cash or otherwise or to pay any brokerage or commission or bonus to any person who may have or may have undertaken to serve or render services to the company in the matter of selling or disposing of the shares or debentures or debenture stocks or other stocks or assets of the company or who may guarantee placing the shares or debentures in the market or under-writing the same.

22. To undertake and execute any trusts or to act as trustees or to do any other such act as may seem desirable or beneficial whether with or without consideration.

23. To do such other things as may be considered as incidental or conducive to the fulfilment of the objects of the company or any of them.

As already observed it should be carefully noted that the objects must not include anything in contravention of the Act. For example, a company cannot have the purchasing or lending of money for the purchase of its own shares, as one of its objects, being in contravention of S. 54A of the Indian Companies Act. The objects should also not include anything in contravention of the general law, such as the keeping of a 'gambling house'. Similarly objects in restraint of trade are illegal,¹ and so are blasphemous objects.² It should also be seen that the objects do not render the company a trade union, as the registration of trade unions is provided by a separate Act.

With the exception of the above restrictions the framers of the memorandum are at liberty to insert such objects as they choose. It is better to have an elaborate though not over-elaborate statement of objects for the simple reason that the acts of the Directors may not be questioned on the ground that they were outside the scope of the company.

Capital clause

The fifth clause regarding capital should simply state the total amount of capital and the classes of shares into which it is divided. It is not necessary to specify the rights attached to each class as it can more appropriately be dealt with in the articles of association, which can later on be changed if so desired without much difficulty; but in the case of memorandum the alteration presents difficulties. Instead, the following clause should be added:—
"The shares under the original or any increased capital may be divided into several classes or sub-classes, and there may be attached unto them respectively

1. *Joseph & Co. v. Heathcole*, (1918)-1. K. B. 418; *McEllistrim v. Bally Mackigott & Co. Society*, (1919) A. C. 548.
2. *Bowman v. Secular Society*, (1917) A. C. 406.

any preferential deferred or any other special rights, viz, privileges, conditions or restrictions as to dividend, capital, voting or otherwise."

Other Provisions. Similarly although there is nothing in the Act which forbids the addition of other provisions in the memorandum, such as participation in assets, winding up, etc. but their addition should be avoided for the reason of inflexibility stated above.

Subscription of Memorandum. Anybody may be a subscriber to the memorandum, an alien, a married woman, a bankrupt, or even a minor.¹

Similarly an incorporated company with the requisite power may be a subscriber and so may be several persons jointly, but not a firm, as it is not a person. All that is required is that the memorandum be signed by each subscriber (who shall add his address and description) in the presence of at least one witness who shall attest the signatures (S. 9). The word 'description' means such particulars as are sufficient to fix the identity of a person, which may be done by giving his vocation or calling. A

person may sign a memorandum through an authorised agent.² The execution will be good whether the agent simply writes his principal's name or adds words showing that it is signed by an attorney.³ One witness for all the subscribers is sufficient. But the signature of a subscriber cannot be

attested by himself or by another subscriber for the word "attest" implies "presence of some person who stands by and is not a party to the transaction."⁴ The witness or witnesses must in each case give his or their address. This also should be clearly written and sufficiently explicit for identification. A subscriber to the memorandum cannot, after the registration of the company, repudiate his subscription on the ground that he was induced to sign by misrepresentation.⁵ The subscriber of the memorandum agrees to take the shares set opposite to his name from the company and to pay for them.⁶ A clause in the articles that shares subscribed for in the memorandum shall be deemed to be fully paid up is ineffectual.⁷

Articles of Association. Next after the preparation of the Memorandum of Association, comes the Articles of Association of a company. The term 'Articles' has been defined under section 1(2) as follows:—

'Articles, means the Articles of Association of a company as originally framed or as altered by a special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table A in the Schedule annexed to Act No. XIX of 1857 or in Table A in the First Schedule annexed to the Indian Companies Act, 1882, or in Table A in the First Schedule annexed to this Act.

1. *Princess of Reuss v. Bos*, (1871) L. R. 5 H. L. 176 (Alien); *Re Laxen & Co.*, (No. 2), 1892, 3 Ch. 555 (Minor).

2. *Whitely Partners*, (1886) 32 Ch. D. 337.

3. *Chhootu Lal v Dalsukhan*, (1893) 17 Bom. 472.

4. Per Lord Selborne in *Seal v. Claridge*, (1881) 7 Q. B. D. 516 at p. 519.

5. *Mital Constituents Limited*, Lord Lurgan's case, (1902) 1 Ch. 707.

6. *Migotti's case*, 4 Eq. 238; *Fothergill's case*, 8 Ch. App. 270; *Nicol's cases* 59 Ch. D. 421; *Lord Lurgan's Case*, (1902) 1 Ch. 707.

7. *Dent's case*, 8 Ch. App. 768; *Crickner's Case*, 10 Ch. App. 614; *Firmstore's case*, 20 Eq. 524.

The definition by itself does not state as to what the articles should contain. The contents and requirements relating to articles of association are given in Ss. 17 to 20-A of the Act. For the convenience of the public, model articles have been framed and given as Table A to the Indian Companies Act, 1913; a perusal of which will show that the duties and powers of

Table A may be adopted. all the three main divisions of the company, *viz.*, the shareholders, the directors and the managers, have been defined with all possible precision. It is recommended that in the initial stages of a business, Table A may be conveniently adopted; and if necessary new provisions can be introduced as their necessity is felt from time to time, or they can be replaced as a whole when the business grows into a big magnitude. In the case of companies limited by shares, if the intention is to adopt Table A, the articles of association need not be registered at all (S. 18).

If separate articles are framed, then they are, like the memorandum of association, to be printed, numbered consecutively into separate paragraphs, and have to be signed by each subscriber to the memorandum and attested in the same manner. (S. 19)

Essential Provisions.—The matters with which the company's articles usually deal are: (1) the exclusion or partial exclusion of Table A, (2) the execution or adoption of a preliminary agreement (if any), (3) the allotment of shares by directors, (4) calls and forfeitures for non-payment of calls, (5) transfer and transmission of shares, (6) increase of capital, (7) reduction of capital, (8) borrowing, (9) general meetings, (10) rights and duties of directors, (11) the powers of managing agents (if any), (12) dividends and reserve fund, (13) accounts and audit, (14) notices, (15) special provisions in case of winding up. While incorporating the above provisions in the articles of association it is essential to keep in view the provisions of S. 17 of the Act, which runs as follows:—

“ 17. (1) There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

“(2) Articles of association may adopt all or any of the regulations contained in table A in the First Schedule, and shall in any event be deemed to contain regulations identical with or to the same effect as regulation 56, regulation 66, regulation 71, regulations 73, 79, 80, 81 and 82, regulation 95, regulation 97, regulation 107, regulations 112, 113, 114, 115 and 116 contained in that table.

“ Provided that (regulations 78, 79, 80, 81, and 82) shall not be deemed to be included in the articles of any private company except a private company which is the subsidiary company of a public company :

Provided further that regulation 107 shall be deemed to require that a statement of the reasons why of the whole amount of any item of expenditure which may in fairness be distributed over several years, only a portion thereof is charged against the income of the year shall be shown in the profit and loss account unless the company in general meeting shall determine otherwise.

(3) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered.

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles shall state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration.”

Therefore it is safer to put down such articles of Table A *mutatis mutandis* which have compulsory application. In case they are not incorporated by oversight even then they are deemed to have been included and effectively govern the working of the company.¹

The memorandum of association contains the conditions upon which alone the company is allowed the incorporation, while the articles of association are the internal regulations of the company.²

Articles are internal regulations.

The articles of association also provide *inter alia* for the mode in which the funds of the company may be dealt with, with the view of ascertaining what will be the net revenue for the purpose of division amongst the shareholders.³

Articles provide with respect to revenues of the company.

The memorandum is, as it were, the area beyond which the action of the company cannot go, inside that area the shareholders may make such regulations for their own government as they think fit.⁴

Scope of Articles.

Subject to the general qualifications, it is now well settled that companies are free to frame their own Articles in any way they like so long as they do not contain provisions contrary to the provisions of the Act or go beyond the limit of the activities as prescribed in the memorandum of association.

Freedom in framing regulations.

The articles of association of a company really play a part subsidiary to the memorandum of association. They accept the memorandum of association as the charter of incorporation of the company, and accepting it as such, proceed to define the duties, the rights and powers of the governing body as between themselves and the company at large and the mode and form in which the business of the company is to be carried on, and the mode and form in which changes in the internal regulations of the company may from time to time be made.⁵ As the memorandum contains the fundamental conditions upon which alone the company is allowed to be incorporated and the articles are merely the internal regulation of the company, it is clear that for anything which the Act says shall be in the memorandum, we must look to the memorandum alone. If the legislature has said that

Nature and objects of Articles.

Articles, subsidiary to Memorandum.

Memorandum a dominant instrument.

of association it is

In case of ambiguity mode be read with Articles.

one instrument is to be dominant we cannot turn to another instrument and read it in order to modify the provisions of the dominant instrument.⁶ Although the Articles cannot over-ride, alter or control the memorandum Association must be read altogether, at all events so far as may be necessary to explain any ambiguity appearing in the terms of the memorandum.⁷

1. An article in Table A cannot be excluded by implication: *Fisher v. Black and White Publishing Co.*, (1901) 1 Ch. 174.

2. *Guinness v. Land Corporation of Ireland*, 22 Ch. D. 349, 381.

3. *Ashbury v. Watson*, 30 Ch. D. 376.

4. *Ashbury Railway Carriage Co. v. Riche*, L. R. 7 H. L. 635, 171, Lord Cairns.

5. Per Lord Cairns in *Ashbury Ry. Carriage Co. v. Riche*, L. R. 7 H. L. 653.

6. *Guinness v. Land Corporation of Ireland*, 22 Ch. D. 349, per Bowen L. J. at 381.

7. *Angostura Bitters Ltd. v. Kerr*, A. I. R. 1934 P. C. 89. See also *Alexander v. Thomas* A. I. R. 1933 P. C. 39, 42. As to whether articles can supplement the memorandum where it is silent, see *Chitambaram v. Aiyangar*, 33 Mad. 36, 39.

If the articles of association contain any article, which is inconsistent with the provisions of the Act it will be deemed to be invalid and ultra vires. As for example, where the articles of association purport to prevent members from exercising the right under the statute to apply for a winding up order¹ or where the articles provide for issue of shares at a discount² the same would be invalid. Similarly where the articles of association contain any article which is inconsistent with the memorandum of association, it will be ultra vires³ and consequently a resolution of the shareholders which runs counter to a condition in the memorandum would be invalid.⁴ No provisions contained in table A can be ultra vires.⁵

Effect of Articles on the Company and the members. Section 21 of Indian Companies Act provides that the memorandum and the Articles of association shall, when registered, bind the company and the members to the same extent as if they respectively have been signed by each member and contain a covenant on the part of each member to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act. The articles of association on the one hand bind the company in order to conform to the provisions contained therein.⁶ On the other hand, each member of the company is bound by the regulations thereof. There have been conflicting judicial dicta in England on the question whether articles constitute a contract between the members *inter se* or between the company and the members. The recent decisions indicate that the articles of association constitute a contract not merely between the shareholders and the company⁷ but also between each individual shareholder and every other, subject to this limitation that the Court would not enforce the covenant as between individual shareholders in most cases.⁸ As a necessary corollary to this, it would follow that any member of the company would be entitled to insist that so far as the company is concerned it should strictly comply with the articles of association.⁹ A member would accordingly be entitled not only to restrain by an injunction the contravention by the company of the provisions of the articles, but also to enforce compliance by the company with the provisions of the articles.¹¹

Relation of Articles with outsiders. An outsider to whom rights purport to be given by the articles in his capacity as such outsider, whether he is or subsequently becomes a member, cannot sue on those articles treating them as contracts between himself and the company to enforce these rights.¹¹

The net result appears to be firstly that no article can constitute a contract between a company and the third person;

1. *In re. Peveril Gold Mines Ltd.*, (1898) 1 Ch. 122.

2. *Welton v. Saffery*, 1897 A. C. 299.

3. *Guinness v. Land Corporation of Ireland*, 22 Ch. D. 349; *Southern Brazilian etc. Ry. Co. Ltd.*, *In re*, (1905) 2 Ch. 78.

4. See *Ashbury v. Watson*, (1885) 30 Ch. D. 376.

5. *Lock v. Queensland Mortgage Co.*, (1896) A. C. 461.

6. See *Gulabsingh v. Pb. Zemindara Bank*, A. I. R. 1940 L. 243. affirmed in I. L. R. 1943 L. 28.

7. *Welton v. Saffery*, 1897 A. C. 299.

8. The dictum of Sterling J. in *Wood v. Odessa Waterworks Co.*, 42 Ch. D. 636, was approved and amplified in *Salmon v. Quin etc. Ltd.*, (1909) 1 Ch. 311 at 318, which case was itself affirmed in 1909 A. C. 442 by the House of Lords.

9. See, for instance, *Oakbank Oil Co. v. Crum*, (1882) L. R. 8 A. C. 65.

10. *Burdett v. Standard Exploration Co.* 16 T. L. R. at 112.

11. *Hickman v. Kent etc.*, (1915) 1 Ch. 881, 897; see also *Pritchards' case*, L. R. 8 Ch. 956; *Melhado v. Parto etc.*, L. R. 9 C. P. 503; *Eley v. Positive Life Assurance Co.*, 1 Ex. D. 20, 88 (Secretary, Solicitor) *Brown v. La Trinidad*, 37 Ch. D. 1 (Director); *Ramkumar v. Sholapur etc. Co.*, A. I. R. 1934 Bom. 427

secondly, that no right merely purporting to be given by an article to a person whether a member or not in a capacity other than that of a member, as for instance, as solicitor, promoter or director can be enforced against the company; and

thirdly that articles regulating the rights and obligations of the members generally as such do create rights and obligations between them and the company respectively.¹

Additions and Alterations.

Unlike the Memorandum of Association of a company which can only be altered by a special resolution after obtaining the confirmation of the Court (S. 12), the Articles of Association can be amended or added to, keeping in view the mandatory provisions of law and in accordance with the memorandum of association, at the sweet will of the shareholders, by passing a special resolution (S. 81) and getting it filed with the Registrar, Joint Stock Companies, (S 20), except that no member can be bound by an alteration made in the Memorandum or Articles after the date on which he became a member, if and so far as the alteration requires him to subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to the company unless he agrees in writing, either before or after the alteration is made to be bound thereby (S. 20-A). The amendments so made are as valid as if originally contained therein. A company therefore has got inherent right to change its articles and this right cannot be taken away by inserting a provision to that effect in the articles², and this applies not only between the company and its share holders but also so far as outsiders are concerned.³

Articles may be altered by special resolution.⁴
Effect of alteration on old members.

Inherent right to alter Articles.

Apart from the limitation stated above, on grounds of equity the powers cannot be used by the shareholders to defraud or oppress a minority.⁴ The power, has, therefore, to be exercised fairly and according to law. For instance a company cannot be allowed to amend its articles in breach of contract with an outsider.⁵ But the aid of a court cannot be invoked to rectify the articles of association on the ground of mistake, for they have statutory operation.⁶

We give below a general form of articles of association for private limited companies in which table A is made applicable and some of the essential provisions are also provided. This form will be found quite useful on account of its brevity without sacrificing essential matters.

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1. See *Hickman's case*, (1915) 1 Ch. 881, 900.
 2. *Walker v. London Tramways Co.*, (1879) 12 Ch. D. 705. *Malleison v. National Insurance Co. Corporation*, (1894) 1 Ch. 200.
 3. *Point v. Symons and Co.*, (1903) 2 Ch. 506.
 4. *Peveril Gold Mines* (1898), 1 Ch. 122; *Payne v. The Cork Co.*, (1900) 1 Ch. 308; *Brown v. British Abrasive Wheel Co.*, (1919) 1 Ch. 250.
 5. *Punt v. Symons & Co.*, (1908) 2 Ch. 506. *British Muree Syndicate v. Alperston Rubber Co.*, (1915) 2 Ch. 186.
 6. *Evans v. Chpman*, 86 L. T. 381; *Scot v. Frank*, (1940) Ch. 794.

(Short form where Table A of the Schedule First is made applicable)

ARTICLES OF ASSOCIATION

of

.....Limited.

1. Subject as hereinafter provided, the regulations contained in Table "A" of the First Schedule of the Indian Companies Act VII of 1913, or any statutory modification thereof (hereinafter called Table 'A') shall apply to the company except regulations 2, 3, 9, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 45, 68, 78, 79, 80, 81 and 82 of Table 'A', which shall not apply to the company.

2. The company is a private company as defined in section 2, sub-section (13) of the Indian Companies Act VII of 1913.

(a) The right of transfer of the shares is restricted in so far that no share can be transferred to an outsider without its first being offered to the existing shareholders at a price to be determined by the directors of the company. However the directors, notwithstanding anything to the contrary contained elsewhere in these Articles or Table A, may at their discretion decline to register any transfer of fully or partly paid up shares without assigning any reason therefore ;

(b) the number of members of the company shall be limited to fifty, not including persons who are in the employment of the company, provided that where two or more persons hold one or more shares in the company jointly, they shall, for the purpose of this regulation, be treated as a single member ; and

(c) the issue of any invitation to the public to subscribe for the shares or debentures of the company is hereby prohibited.

3. Subject to the provisions, if any, in that behalf in the Memorandum of Association of the company, and without prejudice to any special rights, previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred or other special rights, or such restrictions whether in regard to dividend, voting, return of share capital, or otherwise, as the directors may from time to time determine, and any preference share may be issued on the terms that it is or at the option of the directors liable to be redeemed.

4. The original shares of the company are divided as set forth in clause V of the memorandum. The following rights shall attach to each class of shareholders as stated below:—

(a) the preference shares.....

(b) the ordinary shares.....

(c) the deferred shares.....

[As against each class, the rights thereof inclusive of the voting rights may be stated. The characteristics of the various classes of shares have been explained below.]

5. The company shall have a lien on every share for all moneys (whether presently payable or not) due from a shareholder on any account whatsoever, and the company shall also have a lien on all shares standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provision of this clause. The company's lien if any, on a share shall extend to all dividends payable thereon.

6. A resolution in writing circulated to all and assented to in writing by a majority of the directors for the time being in India and duly recorded in the minutes of directors' meetings, shall have the same effect and validity as a resolu-

tion of the directors duly passed at a meeting of the directors duly convened and constituted.

7. The member of directors, unless otherwise determined shall be three. Messrs..... shall be the first directors. The quorum for meeting of the directors shall be two. The remuneration of directors for attending meeting of the directors shall be determined by the general meeting from time to time.

No.	Name, address and description of the subscriber.	Number of shares taken by each subscriber.	Signature of each subscriber.	Signature of witness with name, address and description.
1				
2				

Dated the.....day of.....19

Another short form where Table A of First schedule is made applicable with certain modifications.

FORM II

The regulations in Table 'A' shall apply to the company except in so far as they are in conflict with or repugnant to the following regulations :—

(i) The rights attached to the preference shares may be varied (subject to the provisions of section 66-A of the Indian Companies Act) with the consent in writing of the holders of 2/3rds of the issued shares of that class or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To such separate general meeting the provisions of those regulations relating to general meeting shall *mutatis mutandis* apply, but so that the necessary quorum shall be three persons at least holding or representing by proxy 1/3 of the issued shares of the class.

Variation in rights of preference share-holders.

(ii) If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due or his legal representative shall pay interest upon the sum at 9 p.c. p.a. from the day appointed for the payment thereof to the time of actual payment but the directors shall be at liberty to waive payment of the interest wholly or in part.

Interest on calls unpaid.

(iii) The directors may decline to register any transfer of shares not being fully paid shares to a person or firm of whom they do not approve without assigning any reasons therefor and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfer during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless :

Restriction on transfer of shares.

(a) A fee of Rs. 2 is paid to the company in respect thereof ; and

(b) The instrument of transfer is accompanied by the certificate of the shares to which it relates and such other evidence as directors may reasonably require to show the right of the transferor to make the transfer or in case of loss of the certificate of shares, the instrument of transfer is accompanied by an indemnity deed in the event of any other claimant lodging his claim under the original certificate of shares to which the instrument of transfer relates, together with such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer

When share certificate is lost.

If the directors refuse to register a transfer of any shares, they shall within three months after the date on which the transfer was lodged with the company send to the transferee and the transferor notice of the refusal.

(iv) The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor or the executors or administrators of the deceased holder shall be the only persons recognised by the company as having any title to the share.

The Board of Directors shall be entitled to recognise and register the transmission of share of the deceased if a proper indemnity bond is furnished by the claimant to save the company from loss or damage in case of any other claimant lodging his claim in respect of the share or shares of the deceased. In case the deceased was a sole holder of the share or shares registered in the books of the company, the said share or shares may be registered in favour of the next Karta, provided a proper indemnity bond is furnished by him to the satisfaction of the Board, but the Board of Directors shall be entitled to requisition such other guarantee or proof as they may think fit.

(v) The chairman may with the consent of any meeting in which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished from which the adjournment took place. In case a shareholder causes obstruction or otherwise prevents the chairman from carrying on the proceedings of the meeting in a peaceful manner, the chairman shall be entitled to ask such shareholder or if there are more such shareholders all or any of them to withdraw from the meeting. In case of their refusal to so withdraw, the chairman in his discretion may adjourn the meeting to another day at which (adjourned) meeting such shareholder or shareholders shall not be entitled to attend and may be refused admission to such adjourned meeting. When a meeting is adjourned for fourteen days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of adjournment or of the business to be transacted at an adjourned meeting. The resolution passed at such adjourned meeting shall be deemed to have been passed on the day on which it was actually passed finally.

(vi) The qualification of a director shall be the holding of at least one share in the company and it shall be his duty to comply with the provisions of section 85 of the Indian Companies Act, 1913 as amended.

A director may, subject to a special resolution of the company, appoint another member of the company as a substitute director to act for him during the absence of the director.

(vii) The office of a director shall be vacated if a director—
(a) fails to obtain within the time specified in sub-section (1) of section (85) of the Indian Companies Act, 1913 or at any time thereafter ceases to hold the share qualification, if any, necessary for his appointment ; or

(b) is found to be of unsound mind by a Court of competent jurisdiction ;
or

(c) is adjudged insolvent ; or

(d) fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made ; or

(e) without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a managing director or manager or a legal or technical advisor or a banker ; or

(f) absents himself from three consecutive meetings of the directors or from all meetings of the directors for a continuous period of three months whichever is longer, without leave of absence from the Board of Directors; or

(g) accepts a loan from the company ; or

(h) is concerned or participates in the profits of any contract with the company ; or

(i) is punished with imprisonment for a term exceeding six months; or

(j) discloses the secrets of the company if so proved to the satisfaction of the directors of the company:

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is a director, but a director shall not vote in respect of any such contract or work and if he does so vote his vote shall not be counted.

(viii) The directors may meet together for the despatch of business adjourn and otherwise regulate their meetings as they think fit; questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may and the secretary on the requisition of a director shall at any time summon a meeting of directors.

The directors may adopt a resolution by circulation if there is unanimity of opinion in respect of such a resolution accorded in writing in the minutes of the directors' proceedings book.

(ix) The directors may delegate any of their powers to committees consisting of two or more members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any restrictions that may be imposed on them by the directors.

(Complete form, where Table A. First Schedule is followed)

ARTICLES OF ASSOCIATION

of

.....Ltd.,

PRELIMINARY.

1. In these regulations, unless the context otherwise requires expressions defined in the Indian Companies Act, 1913 (VII of 1913), or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

2. The company is a private company as defined in section 2, subsection (13) of the India Companies Act, VII of 1913.

(a) The right of transfer of the shares is restricted in so far that no share can be transferred to an outsider without its first being offered to the existing shareholders at a price to be determined by the directors of the company. However the directors notwithstanding anything to the contrary contained elsewhere in these Articles or Table A, may at their

discretion decline to register any transfer of fully or partly paid up shares without assigning any reason therefor;

(b) the number of members of the company shall be limited to fifty, not including persons who are in the employment of the company, provided that where two or more persons hold one or more shares in the company jointly, they shall for the purpose of this regulation be treated as a single member; and

(c) the issue of any invitation to the public to subscribe for the shares or debentures of the company is hereby prohibited.

3. Subject to the provisions, if any, in that behalf in the memorandum of association of the company, and without prejudice to any special rights, previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred or other special rights, or such restrictions whether in regard to dividend, voting, return of share capital, or otherwise, as the directors may from time to time determine, and any preference shares may be issued on the term that it is or at the option of the directors liable to be redeemed.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may (subject to the provisions of section 66-A of the Indian Companies Act, 1913) be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

5. No share shall be offered to the public for subscription except upon the term that the amount payable on application shall be at least five per cent of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections 101 and 104 of the Indian Companies Act, 1913 (VII of 1913), as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon. Provided that, in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate and delivery of a certificate for a share to one of several joint-holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding eight annas, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8. (Except to the extent allowed by section 54-A of the Indian Companies Act 1913), no part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

9. The original shares of the company are divided as set forth in clause (V) of the memorandum.

10. The company shall have a lien on every share for all moneys (whether presently payable or not) due from a shareholder on any account whatsoever, and the company shall also have a lien on all shares standing registered in the name of a single person, for all moneys presently pay-

able by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon

11. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made, unless some sum in respect of which the lien exists is presently payable; nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists, as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or insolvency to the share.

12. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable, as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase-money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares.

13. The directors may from time make calls upon the members in respect of any moneys unpaid on their shares, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payments) pay to the company at the time or times so specified the amount called on his shares.

14. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

15. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five per cent per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

16. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which by the terms of issue of a share, becomes payable at a fixed time whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

17. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

18. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and Transmission of Shares.

19. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall

be deemed to remain holder of the share until the name of the transferee is entered in the register of members in respect thereof.

20. Shares in the company shall be transferred in the following form ; or in any usual or common form which the directors shall approve :

I AB of in consideration of the sum of rupees paid to me by CD of (hereinafter called the said transferee), do hereby transfer to the said transferee the share (or shares) numbered in the undertaking called the Company Ltd. To hold unto the said transferee, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution hereof, and I, the said transferee, do hereby agree to take the said share or shares subject to the conditions aforesaid. As witness our hands, the day of

Witness to the signatures of, etc.

21. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

(a) a fee not exceeding two rupees is paid to the company in respect thereof; and

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall within two months after the date on which the transfer was lodged with the company send to the transferee and the transferor notice of refusal.

22. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased and the survivor, shall be the only persons recognised by the company as having any title to the share.

23. Any person becoming entitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or insolvent person could have made; but the directors shall in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or insolvent persons before the death or insolvency.

24. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of Shares.

25. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter

during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

26. The notice shall name a further day (not earlier than the expiration of fourteen days, from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

27. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

28. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

29. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company received payment in full of the nominal amount of the shares.

30. A duly verified declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof, shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money (if any) nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

31. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Alteration of Capital

32. The directors may, with the sanction of the company in general meeting, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

33. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to

the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion, of the directors, be conveniently offered under this article.

34. The new shares shall be subject to the same provision with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.

35. The company may, by ordinary resolution—

(a) consolidate and divide its share capital into shares of larger amount than its existing shares;

(b) by sub-division of its existing shares or any of them, divide the whole or any part of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (d) of sub-section (1) of section 50 of the Indian Companies Act, 1913;

(c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

36. The company may, by special resolution, reduce its share capital in any manner and with and subject to any incident authorised and consent required by law.

General Meeting

37. A general meeting shall be held (within eighteen months from the date of its incorporation and thereafter once at least in every year) at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner as early as possible as that in which meetings; are to be called by the directors.

38. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

39. The directors may, whenever they think fit, call an extraordinary general meeting, and extraordinary general meetings shall also be called on such requisition, or in default, may be called by such requisitionists, as provided by section 78 of the Indian Companies Act, 1913. If at any time there are not within British India sufficient directors capable of acting to form a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be called by the directors.

Proceedings at General Meeting

40. (Subject to the provisions of sub-section (2) of section 81 of the Indian Companies Act, 1913 relating to special resolutions), fourteen days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business, shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the Indian Companies Act, 1913, or the regulations of the company, entitled to receive such notice from the company; but the accidental omission to give notice to or the non-receipt of notice by any member shall not invalidate the proceedings at any general meeting.

41. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the

exception of sanctioning a dividend, the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

42. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business: save as hereinafter provided, two members personally present shall be a quorum.

43. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

44. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

45. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

46. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

47. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands demanded in accordance with the provisions of clause (c) of sub-section (1) of section 79 of the Indian Companies Act, 1913 and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

48. If a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

49. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

50. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

51. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote in respect of each share or each hundred rupees of stock held by him.

52. In the case of joint-holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint-holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

53. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

54. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

55. On a poll votes may be given either personally or by proxy: provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 80 of the Indian Companies Act, 1913, is in force.

56. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless he is a member of the company.

57. The instrument appointing a proxy and the power-of-attorney or other authority (if any), under which it is signed or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

58. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve:—

Company, Limited.

"I, . . . of . . . in the district of . . . being a member of the.....Company Ltd, hereby appoint.....ofas my proxy to vote for me and on my behalf at the (ordinary or extraordinary, as the case may be) general meeting of the company to be held on the day of..... and at any adjournment thereof. Signed this..... day of

Directors

59. The number of directors shall be three Mr....., Mr.....and Mr..... shall be the first directors.

60. The remuneration of the directors shall from time to time be determined by the company in general meeting.

61. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section 85 of the Indian Companies Act, 1913.

Powers and Duties of Directors.

62. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are . . . , by the Indian Companies Act, 1913, or any statutory modification

thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Act, and to such regulations being not inconsistent with the aforesaid regulations or provisions as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

63. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors, but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

64. The amount for the time being remaining undischarged of moneys borrowed or raised by the director for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

65. The directors shall duly comply with the provisions of the Indian Companies Act, 1913 or any statutory modification thereof for the time being in force, and, in particular, with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company or created by it, and to keeping a register of the directors, and to sending to the registrar an annual list of members, and a summary of particulars relating thereto and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions and a copy of the register of directors and notification of any changes therein.

66. The director shall cause minutes to be made in books provided for the purpose—

(a) of all appointments of officers made by the directors ;

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors ;

(c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors ;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal.

67. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least one director and of the secretary or such other person as the directors may appoint for the purpose ; and that director and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualification of Directors.

68. The office of director shall be vacated if the director—

(a) fails to obtain within the time specified in sub-section (1) of section 85 of the Indian Companies Act, 1913, or at any time thereafter ceases to hold, the share qualification, if any, necessary for his appointment ; or

(b) is found to be of unsound mind by a Court of competent jurisdiction, or

(c) is adjudged an insolvent ; or

(d) fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made ; or

(e) without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a managing director or manager or a legal or technical adviser or a banker ; or

(f) absents himself from three consecutive meetings of the directors or from all meetings of the directors for a continuous period of three months, whichever is longer, without leave of absence from the board of directors ; or

(g) accepts a loan from the company ; or

(h) is concerned or participates in the profits of any contract with the company ; or

(i) is punished with imprisonment for a term exceeding six months :

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contract with, or done any work for, the company of which he is director, but a director shall not vote in respect of any such contract or work, and if he does so vote, his vote shall not be counted.

69. The company may from time to time in general meeting increase or reduce the number of directors.

70. Any casual vacancy occurring on the board of directors may be filled up by the surviving or acting director who shall hold office until the next general meeting.

71. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

72. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead ; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors.

73. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. A director may, and the secretary on the requisition of a director shall, at any time, summon a meeting of directors. A resolution in writing circulated to all the directors and assented to in writing by a majority of the directors for the time being in India and duly recorded in the minutes of the proceedings of the directors' meeting shall have the same effect and validity as a resolution of the directors duly passed at a meeting of the directors duly convened and constituted

74. The quorum necessary for the transaction of the business of the directors may be fixed by the directors and unless so fixed shall be two.

75. The continuing directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

76. The directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

77. The directors may delegate any of their powers to committees consisting of such members or member of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

78. A committee may elect a chairman of their meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

79. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of any equality of votes the chairman shall have a second or casting vote.

80. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve.

81. The company in general meeting may declare dividends, but no dividends shall exceed the amount recommended by the directors.

82. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

83. No dividends shall be paid otherwise than out of profits of the year or any other undistributed profits.

84. Subject to the rights of persons (if any) entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amounts paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

85. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

86. If several persons are registered as joint-holders of any share, any one of them may give effectual receipts for any dividend payable on the share.

87. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

88. No dividend shall bear interest against the company.

Accounts.

89. The directors shall cause to be kept proper books of account with respect to—

(a) all sums of money received and expended by the company and the matters in respect of which the receipts and expenditure take place :

(b) all sales and purchases of goods by the company :

(c) the assets and liabilities of the company.

90. The books of account shall be kept at the registered office of the company or at such other place as the directors shall think fit and shall be open to inspection by the directors during business hours.

91. The directors shall from time to time determine whether and to what extent and at what times and place and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorised by the directors or by the company in general meeting.

92. The directors shall as required by sections 131 and 131-A of the Indian Companies Act, 1913, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, income and expenditure accounts, balance-sheets, and reports as are referred to in these sections.

93. The profit and loss account shall in addition to the matters referred to in sub-section (3) of section 132 of the Indian Companies Act, 1913 show arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

94. A balance-sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance-sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount (if any) which they propose to carry to a reserve fund.

95. A copy of the balance-sheet, and the profit and loss account on the income and expenditure account and the auditors' report shall be supplied within a reasonable time to a member, entitled to vote at the annual general meeting, in his requisition and on payment at a charge not exceeding six annas for every hundred words or fractional part thereof.

96. The directors shall in all respects comply with the provisions of sections 130 to 133 and 135 of the Indian Companies Act, 1913, or any statutory modifications thereof for the time being in force.

Audit.

97. Auditor shall be appointed and his duties regulated in accordance with sections 144 and 145 of the Indian Companies Act, 1913, in so far as the same are applicable to a private company or any statutory modification thereof for the time being in force.

Notices.

98. (1) A notice may be given by the company to any member either personally or by sending it by post to him to his registered address or (if he has no registered address in British India) to the address, if any, within British India supplied by him to the company for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

99. If a member has no registered address in British India, and has not supplied to the company an address within British India for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

100. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

101. A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the insolvent or by any like description, at the address (if any) in British India supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

102. Notice of every general meeting shall be given in some manner hereinbefore authorised to (a) every member of the company (including bearers of share-warrants) except those members who (having no registered address within British India) have not supplied to the company an address within British India for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death or insolvency of a member, who but for his death or insolvency would be entitled to receive notice of the meeting.

Classes of shares and their Voting rights.

Before closing the subject of framing of memorandum and articles of Association, the reader must be apprised of the various classes of shares into which capital can be divided and their implication on voting rights. Ordinarily every share confers on the holder thereof the right of a vote at the time of the general meeting of the company; but very often voting rights are divided into unequal proportions according to the risk that a certain class of shares has to run and to give the controlling power to a person or persons who are responsible for running the concern. The capital is generally divided into the following classes of shares:—

1. Preference Shares. This is a class of shares on which fixed dividends are payable and at the time of winding up they are entitled to be re-imbursed out of the assets of the company in the first instance. Because of this preferential treatment given to this class of shares, they are generally not given any voting right. The creation of this class of shares is every much akin to the debentures issued by a company. Like debentures they can be redeemed after a certain period if so provided in the memorandum or articles of association. The only difference being that this class of shares forms the part of the capital whereas debentures are issued to meet temporary requirements. Usually higher denominations are fixed for these shares, e. g., 100/- 500/- or 1000/- per share. Here is a standard clause which defines the rights of preference shares in the articles of association:

"The original shares of the company are divided as set forth under clause... of the memorandum and the following rights shall be attached to them, *inter alia*, subject as hereinafter provided, that is to say :—

(a) The said preferential shares shall confer the right to a fixed cumulative¹ dividend at the rate of six per cent per annum free of British India Income-tax on the capital for the time being paid up thereon respectively and shall rank both as regards dividend and capital in priority to the other class of the shares, *i. e.*, ordinary and deferred shares, but shall not confer any further right to participate in profits or assets.

Cumulative dividend. If the shares are intended to be redeemable then a further sentence can be added that (b) "these shares shall be redeemable out of profits and at par at the discretion of the directors at any time after the close of 19....."

Preference shares are of the following kinds :

(a) Redeemable, *i.e.*, those which can be redeemed after a certain period as has been stated above.

(b) Participating—These kinds of preference shares besides getting a fixed dividend at a stated rate, are allowed to share in the profits of the company with the other classes of shares in a certain ratio, *e. g.*, 1 : 3 or 1 : 4.

(c) Votable and non-votable. This is according as the voting right is conferred by the articles of association or not. Sometimes the denomination of these shares is fixed at a high figure as compared with other shares, for instance, 500/- as compared to Rs. 10/- or 100/-. In that case they are given one vote for each share thereby giving 50 votes or 5 votes respectively to other classes as against one vote for a preference share.

(d) Tax free shares. Those carrying dividend free of income-tax as against those carrying dividend less taxes. If it is not stated that the shares carry dividend free of income-tax then the company will deduct income-tax at the time of payment of dividends, and thus the rate will work to something less than what is stated in the articles of association.

2. Ordinary shares. This name is given to the class of sharers to whom no fixed dividends are paid and they enjoy no preferential rights like those of preference shares. On the other hand the holders of these shares have to contribute to the full amount on their shares, in order to meet the liabilities of the company and also to compensate the preference shareholders, if the assets in a winding up of a company are not adequate. Usually the dividends of these shares are not fixed and they start earning dividends only when there are sufficient profits left over after meeting the liability for fixed dividends of preference shareholders. In a progressive concern these shares may earn much more, whereas the preference shareholders receive the stated dividends. Because the ordinary shareholders run a greater risk of losing their entire investments, therefore they have more controlling powers in the form of larger number of votes.

3. Deferred shares. These shares are also called management shares, because they are generally held by the real owner of the concern, whether he be the managing director, managing agent or the general manager. The denomination of these shares is fixed at a very low figure as compared with ordinary and preference shares, *e g.*, if the ordinary shares are fixed at Rs. 100/- each, then the deferred shares may be of a denomination of Rs. 5/- or Re. 1/- per share. In this

1. In the absence of contrary provisions, preference shares carrying a preferential dividend are *prima facie* cumulative. *Webb v. Earle*, (1875), 20 Eq. 556. But the presumption is rebuttable, *Staples v. Eastman etc. Co*, (1896) 2 Ch. 303.

manner deferred shares of the value of only about 10,000 or 5,000 can control the voting power of a concern of Rs. one lac. These shares are very often utilized for making differential distribution of profits amongst the owners of the concern. For instance, it is sometimes provided that after payment of a fixed dividend to preference shareholders and ordinary shareholders, the remaining amount available for distribution amongst the shareholders shall be divided in the ratio of 1 : 2 amongst the ordinary and deferred shareholders. In this way the person actually managing the concern and running a show can receive larger share of the profits in the form of dividends by a nominal investment in the form of deferred shares.

As to how the capital of a company is to be divided into various classes can only be decided according to the requirements of each individual case. Here it may be noted that the present policy of the Government is to discourage payment of high dividends to the shareholders and for that reason it has been provided that dividends paid over and above fixed rates and in excess of 30 p. c. of the profits shall be liable to extra taxation. This has been done to encourage the companies to create reserves and to prevent money going into the hands of the public. This has also necessitated the repeal of section 23-A of the Indian Income-tax Act, 1922, according to which a private limited company was under statutory obligation to distribute at least 60 per cent of its assessable income, reduced by the amount of income-tax and super-tax payable by the company. Many companies therefore have, in order to save taxation, prescribed fixed dividends for almost all the classes of their shares. This is of course a legitimate evasion of the provisions of laws of taxation. It may also be stated that if some of the progressive concerns were now to amend their articles of association in such a manner as to give fixed dividends on their ordinary as well as deferred shares, there is nothing in the present law to stop them from getting the advantage.

Formalities of Registration. After the memorandum and articles of association are ready and they have been duly signed and attested, the only other document that has to be got ready for being sent to the Registrar, Joint Stock Companies, in the case of a private limited company is a declaration of compliance with the requirements of the Indian Companies Act (S. 24). Besides the three documents mentioned above which have to be forwarded to the registrar, there is a notice of the situation of the Registered Office, which, though it can be sent afterwards, it is better to send along with other documents at the time of registration (S. 72). Both these forms are given below for ready reference. It should be noted that the declaration has to be signed by an advocate or attorney entitled to appear before a High Court, who is engaged in the formation of the company or by a person named in the articles as a director, manager or secretary of the company. Therefore if no advocate is engaged and the declaration is sought to be signed by the promoters or subscribers of the company, one of them should be named as the first director or a secretary or manager.

Form of declaration for Registration of Company.

The Indian Companies Act (See Sec. 24). Filing fee Rs. 3/.

Declaration of compliance with the requirements of the Indian Companies Act, 1913, made pursuant to section 24 (2) on behalf of a company proposed to registered as the.....

Presented for filing by..... I.....of.....
do solemnly declare that I am a advocate/attorney entitled to
Form appear before a High Court who is engaged in the
formation of the Company/a person named in the
Articles as a Director, manager or Secretary of the.....and that all
the requirements of the Indian Companies Act, 1913 in respect of the

matters precedent to the registration of the said company and incidental thereto have been complied with, save only the payment of the fee and sums payable on registration. And I make this solemn declaration conscientiously believing the same to be true.

THE INDIAN COMPANIES ACT, 1913.

(Section 72)

Notice of the situation of the Registered Office
of

.....Ltd.,

Presented for filing by.....

To,

The Registrar of Joint Stock Companies,

.....

The directors of the above named company hereby give you notice pursuant to section 72 (1) of the Indian Companies Act, 1913, that the registered office of the company is situated, at.....

.....

Signature.....

Secretary.

Dated.....

REGISTRATION AND FILING FEES.

Ss. 248, 249, & 249-A of the Act deal with the Office of the Registrar of a province and the fees etc. payable in respect of documents to be filed in that office. The law also gives the public a right to inspect the records on payment of prescribed fees and obtain copies thereof. [S. 248 (5)]. As the law lays down certain obligations on the secretaries or managers of the companies to file certain returns in the office of the Registrar from time to time, S. 249-A gives the power to the Registrar to take the assistance of the Court in enforcing compliance if after a notice of fourteen days the said returns are not filed. This right is also given to any shareholder or creditor of the company. The company or any officer thereof can be burdened with all the costs of and incidental to the application, besides imposition of other penalties prescribed by law. We have for the convenience of company managers given elsewhere in this book a detailed list of the returns to be filed. The schedule of fees is given below :

Enforcing compliance
by company.

(See sections 249 and 262)

Table of fees to be paid to the Registrar.

By a company having a share capital.

1. For registration of a company whose nominal share capital does not exceed Rs. 20,000 a fee of
2. For registration of a company whose nominal share capital exceeds 20,000 the above fee of forty rupees with the following additional fees regulated according to the amount of nominal capital (that is to say) :—

Rs. 40/-

For every 10,000 rupees of nominal share capital, or part of 10,000 rupees upto 50,000 rupees

For every 10,000 rupees of nominal share capital, or part of

Rs. 20/-

10,000 rupees after the first 50,000 rupees upto 10,00,000 Rs. 5 0 0
rupees

For every 10,000 rupees of nominal share capital, or part of 10,000 rupees after the first 10,00,000 rupees 1 0 0

3. For registration of any increase of share capital made after the first registration of the company, the same fees per 10,000 rupees or part of 10,000 rupees, as would have been payable if such increased share capital had formed part of the original share capital at the time of registration.

Provided that no company shall be liable to pay in respect of nominal share capital on registration, or afterwards, any greater amount of fees than 1,000 rupees taking into account, in the case of fees payable on an increase of share capital after registration, the fees paid on registration.

4. For registration of any existing company, except such companies as are by the Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.

5. For filing any document by this Act required or authorised to be filed other than the memorandum or the abstract required to be filed with the registrar by a receiver or the statement required to be filed with the registrar by a liquidator in a winding up 3 0 0

6. For making a record of any fact by this Act authorised or required to be recorded by the registrar, a fee of 3 0 0

In pursuance of section 249 of the Indian Companies Act, 1913 and in supersession of the Notification of the Government of India in the Department of Commerce and Industry, No. 6161-26, dated the 22nd July, 1916, the Governor General in Council is pleased to

Notification No 23 (II)
tr (C. L.) 41 published
in Gazette of India
dated 6.6.1942 Part
I., P. 983.

direct that in place of the fees specified in items No. 5 and 7 respectively, of parts I and II table "B" in the First Schedule of the said Act, the following reduced fees shall be paid to the Registrar in respect of the matters hereinafter mentioned, namely:

For filing returns of allotments prescribed by S. 104 of the said Act.

In cases in which the aggregate paid up value of the shares allotted does not exceed Rs. 25/- 0 4 0

In case in which the aggregate paid up values of the share allotted exceeds Rs. 25 but does not exceed 50/- 0 8 0

In cases in which the aggregate paid up value of the shares allotted exceeds 50/- but does not exceed 75/- 0 12 0

In cases in which the aggregate paid up value of the shares allotted exceed 75/- but does not exceed 100/- 1 0 0

In cases in which the aggregate paid up value of the shares allotted exceeds Rs. 100/- 3 0 0

For filing any other document required or authorised by the said Act or rules made thereunder, other than the memorandum or the abstract required to be filed with the registrar by the liquidator in a winding up, 3 0 0

II. By a company not having a share capital.

1. For registration of a company whose number of members, as stated in the articles of association does not exceed 20, 40 0 0

2. For registration of a company whose number of members as stated in the articles of association, exceeds 20 but does not exceed 100, 100 0 0

3. For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 100/- with an additional Rs. 5/- for every 50 members or less number than 50 members, after the first 100.
 4. For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of 400 0 0
 5. For registration of any increase on the number of members made after the registration of the company, the same fees as would have been payable in respect of such increase if such increase had been stated in the articles of association at the time of registration.
- Provided that no one company shall be liable to pay on the whole a greater fee than 400/- in respect of its number of members, taking into account the fee paid on the first registration of the company.
6. For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged, for registering a new company.
 7. For filing any document by this Act required or authorised by the said Act or rules made thereunder, other than the memorandum or the abstract required to be filed with the registrar by a receiver or the statement required to be filed with the registrar by the liquidator in a winding up. 3 0 0
 8. For making a record of any fact by this Act authorised or required to be recorded by the registrar, a fee of 5 0 0
- Since 23 P. 41 reduced to Rs. 3 0 0

Certificate of Incorporation. When the documents stated above are filed with the registrar joint stock companies and the requisite fees duly paid, the registrar, issues a certificate, called the "Certificate of Incorporation." According to S. 24 (1) this certificate is conclusive evidence of the fact that all the requisites of the Act have been complied with and the company is duly registered as required by law. Thus whatever may be the defects in complying with formalities prior to the registration, they are all of no consequence once a certificate is issued by the registrar. This provision of law is

Conclusiveness of certificate.

Once a company is registered it is considered as born and can only be removed by being wound up.¹ "But the Crown can move the court to cancel the registration if it is found that it had been registered for an illegal object."² A company can also be declared defunct by the registrar under S. 247 after due notice. Companies so removed from the registers can be resorted by the court if it is found that it is still carrying on business.³

Removal from Register

Conversion of a Running Business into a Private Company.

Having known the procedure of the formation of a company when a business has yet to be started, it becomes rather easy to follow the conversion of a running business into a limited company. The first step is to ascertain the value of the business. To do this one has to find out the assets of the firm, by taking into consideration the stock in trade, furniture, machinery, business premises, outstandings from customers, other bills and notes, cash in hand and with banks,

Valuation.

goodwill, etc., and also the liabilities, such as debts due from the firm for goods received and services rendered, or other amounts outstanding. If the conversion is made for

1. *Princess of Reuss v. Bos*, (1871) L. R. 5 H. L. 176.

2. *Browman v. Secular Society*, (1917) A. C. 406; 439.

3. *In re Outley Assurance Society*, 34 Ch. D. 479.

the benefit of family members or the person who was already the proprietor, detailed accounts need not be gone into and a fair estimate of the position is taken as on the last balance-sheet.

After the net value of the business is determined after setting off liabilities against the assets, the question for determination arises whether the liability of the shareholders is to be fixed at that value, and they have to be issued fully paid up shares, or for a higher amount, in which case they will accept partly paid shares. In most cases the previous owners or proprietors do not want to incur further liability to the creditors of the company and one is simply willing to hand over the business with its assets and liabilities. But it should be noted that their liability for the debts already contracted does not cease unless the creditors are also a party to the conversion or subsequently agree to recognise the company alone as their debtor. In determining the property to be acquired by the company, very often book debts are allowed to remain the property of the owners (as vendors), and they authorise the company as their agents to collect the debts. This reduces the value of the business and thereby stamp dues on the agreement that is to be executed between the company and the vendors.

Agreement.—In all cases of conversion of a running business the memorandum of association makes a reference to the preliminary agreement to be entered into with the vendors for taking over the assets and liabilities of the business. Although the draft of the agreement is prepared beforehand and annexed to the articles of association, as the proposed agreement, but actually the agreement has to be entered into after the company has been formed because prior to that the company is not born and hence nobody can enter into the agreement. This agreement has to be properly stamped and filed in the office of the registrar joint stock companies. A form of an agreement is given below for adoption where necessary.

Agreement for sale made with Agent or Trustee for an intended company before its incorporation.

An agreement made the _____ day of _____
between A.B. _____ of _____ and C.D. _____
of _____ (hereinafter called the vendors)
of the one part and X of _____ on
behalf of the company mentioned below (which company is hereinafter
referred to as the company) of the other part.

Whereas the vendors have have been carrying on business as _____
at _____ and, a company to be called the _____ Limited
is to be formed under the Indian Companies Act, 1913 to 1939, having for its
object among other things the acquisition, carrying on and working of the said
business ; Now it is hereby agreed as follows :—

1. The vendors shall sell, and the company shall purchase :

First, the goodwill of the said business (with the exclusive right to use the
name of.....Co., as part of the name of the company, and
represent the company as carrying on such business in
continuation of the vendor's firm, or in succession thereto),
and all trade marks conneted therewith.

Secondly, all the immovable properties specified in Schedule
Immovable property. hereto ;

Thirdly, all the plant, machinery, office furniture, patents, licences, live-stock, wagons, carts, lorries, implements and utensils to which the vendors are entitled in connection with the said business.

Machinery etc.

Fourthly all book debts and other debts and actionable claims due to the vendors in connection with the said business, and the full benefit of all securities for such debts.

Books debts.

Fifthly the full benefit of all pending contracts and engagements to which the vendors are or may be entitled in connection with the said business.

Benefit of contracts.

Sixthly all bills and notes of the vendors in connection with the said business.

Seventhly, all other property to which the vendors are entitled in connection with the said business.

2. The consideration for the said sale shall be the sum of Rs.

which shall be paid and satisfied as follows, viz., as to the sum of Rs. in cash, and as to the sum of Rs.

Consideration.

by the allotment to the vendors or their nominees of fully paid up ordinary/preference shares in the capital of the company of Rs.

each by allotment to the vendors or their nominees and debentures of the company carrying interest at the rate of p.c. per annum

Partly in debentures.

as from the day 19 . As to the residue

of the consideration for the said sale, the company shall undertake to pay, satisfy, discharge and fulfill all the debts, liabilities, contracts, and the engagements of the vendors, in relation to the said business, and shall

Discharge of debts.

indemnify them against all proceedings, claims and demands in respect thereof.

3. The said premises are sold free from all incumbrances (except the mort

Incumbrances.

gages, specified in the

schedule hereto.).

4. The description of the said several properties is believed to be correct,

Sale not annulled by defects in description of properties.

but if any error should be found therein the same if capable of compensation, shall not annul the sale, but a fair compensation shall be allowed by the vendors in respect thereof.

5. The company shall, without investigation, accept such title as the

Defect in title.

vendors have to the said premises hereby agreed to be sold.

6. The purchase shall be completed by day of at when possession of the premises shall, as far as practicable, be given to the company and the considerations aforesaid so far as they consist of cash and shares and debentures, shall be paid and satisfied subject to the provisions of this agreement, and thereupon the vendors and all other necessary parties, if any, shall, at

Further assurance.

the expense of the company execute and do all assurances and things for vesting the said premises in the company and giving to it the full benefit of this agreement as shall be reasonably required.

7. If from any cause whatever other than the willful default of the vendors

Delay in completion of sale.

the purchase shall not be completed by the said

day of

, the company shall pay interest on the said sum of Rs. cash at the rate of p.c.

per annum.

8. As regards the premises subject to mortgages as specified in schedule

Conveyance of properties.

hereto the vendors shall convey the same to the company subject to the mortgages and the company shall be at liberty

to retain out the cash portion of the said consideration a sum sufficient to pay off and satisfy in full all claims under such mortgages.

9. Save as hereinbefore provided, the vendors shall pay and discharge all their debts and liabilities in connection with the said business as on the _____ day of _____, and shall indemnify the company against all proceedings, claims and demands in respect thereof.

10. The possession of the said premises shall be retained by the vendors up to the said _____ day of _____ and in the meantime they shall carry on the said business in the same manner as heretofore so as to maintain the same as a going concern, and they shall from the date of this agreement be deemed to be carrying on such business on behalf of the company, and shall account and be entitled to be indemnified accordingly.

11. Each one of the vendors agrees that he will not at any time after completion of this sale, either solely or jointly with or as manager or agent of, any other person or persons, or company, directly or indirectly carry on, or be engaged or concerned in the business of a _____ or permit or suffer his name to be used or employed in carrying on or in connection with the said business within _____ miles of _____, save so far as the vendor shall as an officer or agent of the company be employed in the business of the company.

12. All books of account of the said firm, and all books of reference to customers and all other books and documents of the said firm shall be delivered by the vendors to the company on possession being given of the premises pursuant to the provisions of this agreement, and the company shall thenceforth be entitled, to the custody thereof, and to use thereof for the purpose of carrying on its business, but the vendors shall have free access, at all reasonable times, to such of the said books and documents as relate to the outstanding book debts and credits of the vendors, or may otherwise be requisite; for enabling the vendors to collect and get in the assets of the said firm not hereby agreed to be sold and to liquidate the affairs thereof, nevertheless when and so soon as any of the said books shall cease to be necessary for the carrying on of the said business, the same shall be delivered over to the vendors, who shall thereupon be absolutely entitled thereto.

13. Each of the vendors shall retain and hold in his name the whole of the shares allotted to him pursuant to clause _____ hereof for a period of _____ years from the allotment thereof.

14. Upon the adoption of this agreement by the company in such manner as to render the same binding on the company, the said X shall be discharged from all liability in respect thereof.

15. Unless before the _____ day of _____ the company shall have become entitled to commence business, either of the parties hereto may, by notice in writing to the other, determine this agreement, and after adopting this agreement of the company shall stand in the place of the said X, for the purpose of this clause.

16. If this agreement shall not be adopted by the company in manner aforesaid before the _____ day of _____ next, either of the parties hereto may, by notice in writing to the other determine the same.

17. The determination of this agreement under clause 15 or 16 hereof shall not give rise to any claim for compensation, expenses or otherwise.

18. Unless before the _____ day of _____ at least
 shares of the nominal value of Rs. _____ in the company have been applied
 for by responsible persons, either of the parties hereto may,
 Annulment prior to completion. by notice in writing to the other, annul this agreement
 which shall become void save as regards this clause
 hereof.

As witness the hands of the parties hereto the day and the year first
 above written.

Schedules.

(ANOTHER FORM OF AGREEMENT)

**Preliminary Agreement between Vendor and the Group of Promoters
 of the Company re sale of Machinery and Foundry Works.**

This agreement is made on. day of. between A B of
 . . . (hereinafter called the vendor) of the first part and C, D, E of. (herein-
 after called the group) of the other part.

Whereas the vendor has imported and is possessed of machinery for the
 manufacture of hardware materials and is at the present time carrying on the
 business of manufacturing such materials and attending to other works in the
 foundry installed and erected at. and the machinery along
 with all necessary and requisite tools and appliances and the said foundry
 works is in perfect running condition, and

Whereas the said vendor is willing to sell the said machinery along with
 all and sundry articles and things contained in the said foundry and the said
 group is willing to purchase the same with a view to sell the same over to a
 company to be incorporated as a private company, limited by shares, the main
 features whereof are described below :

Now the parties aforementioned have agreed as follows :—

1. The price of the machinery etc., more particularly described in the
 schedule attached hereto is fixed at Rs out of which Rs have been
 paid to the said vendor (the receipt whereof the said vendor hereby acknow-
 ledges) and the balance of the said price is to be paid half in cash within four
 months of the date of this agreement and in respect of the other half, namely,
 Rs the vendor agrees to purchase fully paid shares of the said
 company of the value of Rs each in accordance with the rules and
 regulations of the said proposed company.

2. The vendor shall sell and deliver the subject matter of this agreement
 to the said group within four months of the date of this agreement at the
 request of the said group and on payment of Rs as aforesaid. In case the
 proposed company is incorporated within the aforesaid period of four months,
 the vendor shall enter into an agreement of sale with respect to the said subject
 matter in terms of this agreement, which will be thereafter called the principal
 agreement with such modifications as may be necessary to vest the rights of the
 said group in favour of the said company so incorporated.

3. The name of the proposed company shall be or such other
 name as may be permissible and it will be duly notified to the said vendor by the
 said group.

4. That the said vendor has assured the said group that he has absolute
 and unrestricted right to sell the said subject matter of this agreement to the
 said group and that he has power to sell the same and the same is not mortgaged
 or hypothecated or otherwise encumbered in any manner whatsoever after
 payment of any sum or sums to any other person.

5. The said vendor has also agreed and assured the said group that
 he shall not carry on the business under the name and style of

under which he was hitherto carrying on the business of the aforesaid foundry or any other like name, for a period of two years after the date of completion of the sale under this agreement to the said group or to the said proposed company. If the sale of the subject matter of this agreement is not completed by the group, the said vendor is and shall be entitled to rescind this agreement and thereupon the deposit of Rs. paid to the said vendor shall be forfeited and neither party to this agreement shall have any claim against the other for any expenditure incurred or damages sustained to otherwise. *

In witness whereof the parties aforementioned have signed this agreement.

Schedule above Referred to.

Group.

A B.....(Vendor).....

C.....

D.....

E.....

(ANOTHER FROM OF PRELIMINARY AGREEMENT)

Agreement between Vendors and the Syndicate in Respect of Sale of Lorries for a Proposed Transport Company.

This agreement is made on.....day ofbetween A of, B of....., C of....., D of....., and E of....., (hereinafter called the vendors) of the one part and M, N, P of..... (hereinafter called the syndicate) of the other part.

WHEREAS the vendors abovementioned are the owners of lorries, the number, description, particulars and respective prices whereof are given in detail in the schedule attached hereto and are desirous to sell, convey and transfer the same along with such tools, accessories and spare parts as mentioned in the said schedule at the prices mentioned respectively against each such lorry and the said syndicate is willing to purchase and acquire the said lorries with the accessories, etc. mentioned in the said schedule at the prices fixed against each such lorry for the purpose of selling and transferring the same to a company to be incorporated at the instance of the said syndicate under the name of..... or such other name as may be permissible and resolved upon by the said syndicate under the terms and conditions mentioned hereinbelow ;

NOW IT IS AGREED between the aforesaid parties as under:—

1. That the name of the proposed company shall be..... with an authorised capital of Rs..... divided into..... shares of Rs..... each of which..... shares will be Preference Shares of Rs..... each and shares will be Ordinary Shares of Rs..... each and whereof Messrs. B, D & E along with other persons shall be the first directors.

2. That fully paid shares of the nominal value of the price fixed with respect to each lorry of each of the said vendors shall be allotted to and accepted by each such vendor in consideration of the price payable to him for the sale of the said lorries to the syndicate or the company aforementioned as the syndicate may require within three months of the incorporation of the company or within four months of the date of this agreement which ever is the later. That the said vendors shall be allotted Preference Shares if so applied for in writing by each such vendor, failing which fully paid up ordinary shares of the nominal value of the price of the lorry or lorries belonging to and sold by each such vendor to the syndicate or the company as the case may be shall be allotted. In case, the said proposed company is

not incorporated as contemplated under this agreement the syndicate shall pay the price mentioned in the said schedule in respect of each and all such lorries, the subject matter of this agreement to their respective owners as mentioned in the said schedule within six months of the date of this agreement.

3. That the said vendors shall be entitled to run and ply their respective lorries as heretofore till the completion of the terms and conditions or of the sale to the said syndicate or the company as the case may be but shall be responsible to keep the said lorries in proper state of repair and fully equipped as at the time of this agreement and licences in the public registers.

4. That the vendors shall be bound to transfer the ownership of the said lorries in favour of the proposed company at the request of the said syndicate on the incorporation of the said company and duly effectuate transfer by causing the said lorries to be registered in the name of the said company. The said vendors also undertake to assign and transfer the permits, if any, or other licences or privileges attaching to each such lorry, the subject matter of this agreement in favour of the syndicate or the company as the case may be.

5. That the draft memorandum and articles of association of the proposed company shall form part of this agreement and is attached hereto subject to such variation, modification, addition or subtraction as the syndicate may deem fit provided, however, that the essential conditions thereof shall not be altered or amended except with the approval of the majority of the said vendors. In case of a difference of opinion between the syndicate and the majority of the said vendors, the decision of Mr.....Advocate shall be final and binding on the parties aforementioned. The said vendors have been informed that the said Mr..... has been retained by the said syndicate to prepare, draft, formulate, assist and act for the said syndicate in the formation and incorporation of the said company.

6. In case of default by the said vendors to comply with the terms of this agreement each of the said vendors so in default shall pay to the said syndicate by way of liquidated damages a sum of Rs..... in respect of each lorry not delivered or sold to the said syndicate or the company as the case may be or in respect of each such lorry which may be damaged or not available or not fit for plying for hire as it was at the date of this agreement.

IN WITNESS WHEREOF the parties aforementioned have signed this agreement.

	A.....
M.....	B.....
N.....	C.....
P.....	D.....
	E.....

Syndicate

Vendors

Schedule

ANOTHER FORM

Agreement between the Vendor, the Nominee on behalf of the Company in respect of Motor Car Dealers Business.

This agreement is made on..... day of..... between AB of..... (hereinafter called the vendor) of the one party and CD of..... (hereinafter called the nominee on behalf of the company) of the other party.

WHEREAS the vendor is carrying on the business of sale and repair of motor cars and other vehicles in the town of..... under the name and style of..... ; and.

WHEREAS the said vendor is willing and desirous to promote a company under the name of..... or such other name as may be permissible and resolved upon by him ;and

WHEREAS the said nominee has consented to act for and on behalf of the said proposed company when so incorporated with a nominal capital of Rs..... divided into..... shares of Rs..... each.

NOW IT IS AGREED between the aforesaid parties as under :—

1. That the said vendor will sell and convey to the said proposed company when incorporated and the said company will purchase the said business heretofore being carried on by the said vendor in the name and style of..... for a consideration of Rs..... within three months of the date of incorporation of the said company, the assets of the said business having been described in greater detail in the schedule attached hereto which shall include the goodwill, the lessee rights, the benefit of the contracts, the licences and privileges heretofore enjoyed by the said vendor and all other assests, effects and debts and other choses in action to which the vendor is entitled at the date of this agreement.

2. The vendor will deposit with the said nominee all such documents, agreements, promissory notes, bills, vouchers and other securities or title deeds relating to and connected with the said business, which the nominee shall hand over to the said company on its incorporation.

3. The said vendor shall pay off all debts and discharge all obligations arising against or in connection with or with respect to the said business within a period of three months from the date of this agreement. The said nominee shall for and on behalf of the company when so incorporated pay or cause to be paid the sum of Rs..... fixed as price of the said undertaking or business, the subject matter of this agreement. It shall be at the option of the said vendor to apply for and purchase fully paid share of the said company to the extent of Rs... in lieu of or as per adjustment of the price payable to him by the said company or the nominee as the case may be. The said vendor shall carry on the business as heretofore until the completion of the sale under this agreement but he shall indemnify the said nominee or the company, as the case may be, for any damage caused to the said business or any further obligation incurred by him in connection with the said business. The said vendor shall not carry on the business of motor car dealers or repairers or manufacturers under any other name or style for a period of two years from the date of the completion of sale of the subject matter of this agreement. He shall be bound to transfer all licences, privileges and permits or such like authorities in favour of the company at the time of the completion of the sale under this agreement.

4. At the time of or upon the adoption of this agreement by the proposed company on incorporation, the said nominee shall be discharged from the obligation arising under this agreement. In case the said nominee be not discharged on or before the..... day of..... he may rescind this agreement and notify accordingly to the said vendor. And in case of the company not being incorporated or if for any reasons whatsoever, it does not commence business within four months of the date of this agreement, the vendor may rescind this contract by notice in writing to the said nominee. In the event of recision of this agreement as provided above, no claim or obligation shall arise in favour of or against the other party to this agreement in respect of anything done or intended to be done under this agreement or in respect of these presents.

IN WITNESS WHEREOF the parties aforementioned have signed this agreement on the date mentioned above.

AB.....

(Vendor)

CD.....

(Nominee)

Schedule

**(Adoption of Preliminary Agreement)
Agreement between the Company and the Vendor or the Group
or Syndicate as the case may be adopting
the Principal Agreement.**

This agreement is made on..... day of..... between AB of..... (hereinafter called the company) of the first part and CD of..... (hereinafter called the vendor) of the second part and EF of..... (hereinafter called the Group) of the third part and is supplemental to the agreement originally entered into between the vendor and the group aforementioned on..... which shall hereafter be called the principal agreement.

WHEREAS the company was incorporated on..... as contemplated in the principal agreement ; and

WHEREAS it was provided in the said principal agreement that the said company shall on such incorporation be entitled to acquire all rights and titles of the said group in place of or in substitution of the said group and be clothed with the same obligations as detailed in the principal agreement.

NOW IT IS HEREBY AGREED amongst the aforesaid parties as under :—

1. That the principal agreement is hereby adopted by the said company which shall operate with full force and effect as heretofore except for the substitution of the name of the company in place of the said group as if the said company had been in existence at the date of the said principal agreement and had been a party to that agreement in respect of the said group subject to such modifications or alterations as hereinafter mentioned.

2. The terms and conditions of the said principal agreement shall be modified in the manner hereinafter appearing :—

(i) That the expression "....." shall be substituted for the words ".....".

(ii) That the expression "....." shall be substituted for the words ".....".

(iii) That paragraph..... shall be numbered as..... shall be added to the said agreement running as under :—

.....

.....

.....

The said group is hereby released from all obligations under the said principal agreement.

4. This agreement shall come into operation when the said company has commenced business and on the date this agreement shall be binding on all the aforesaid parties unless legally rescinded by notice in writing by the said group to the said company.

IN, WITNESS WHEREOF the parties aforementioned have signed this agreement.

AB.....

(Company)

CD.....

(Vendor)

EF.....

(Group)

Note.—The principal agreement is attached herewith and has been signed by the aforementioned parties and forms part of this agreement.

Stamp duty. An agreement has to be stamped with a special adhesive stamp of an amount which has been stated in the Appendix against the heading "Agreements or memorandum of an agreement" which differs in the case of different Provinces.

The other documents and formalities required for the conversion of a running business into a limited company being the same as has been stated in the case of registering a new concern, no difficulty would be experienced in completing the registration.

Deferred conversion. There can be cases in which a person defers or may have to postpone conversion of his business into a limited liability company. His reasons for doing this may be various. He may want to continue his business while he is living without any fear of mis-management, but he may not have the necessary confidence in his heirs to carry on the business after his death. Again the person may have trust money in the business and so long as he continues to utilize this fund, conversion may not be possible. Further it may be necessary to postpone conversion to a fixed time for want of consent of other partners. Owing to such situation it is always best to make a will. The directions for conversion of the business in the will should be complete and the executors or trustees should be given wide powers for payment to directors, specifying the funds to be passed on to the company clearly and distinctly. The trust should also be given wide discretion regarding capital and the class of shares into which it is to be divided.

Direction for formation
of company by will.

or trustees should be given wide powers for payment to directors, specifying the funds to be passed on to the company clearly and distinctly. The trust should also be given wide discretion regarding capital and the class of shares into which it is to be divided.

After a business has been converted into a limited company, care should be taken to issue a circular letter to all the customers, intimating to them the said conversion. In case the customers are numerous, then it is better to notify the fact through advertisement in any legitimate way.

A circular letter will be more or less in the following form :—

.....Co.,

9 Mission Row,

CALCUTTA

Dear Sir,

You will be glad to know that we have converted our business which was previously being carried on under the name and style of

.....Co., to.....

Co. Ltd., and change has been brought to regulate our business and to increase the efficiency of our working. So far as the old partners and proprietors are concerned, they will continue as shareholders and will be interested to the same extent in the management of the company. The change will thus be only in name and you will have the benefit of our attention and services as heretofore.

Circular letter to old
customers.

So far as the finances are concerned the capital has been increased and some of the friends and relations of the old proprietor have also contributed to the funds. The new company has taken all the assets and debts of the old concern, however, the liability of the previous owners for taxes outstanding on the date of conversion has been maintained in the interest of our creditors.

We are confident that the company in its present form will render you more and better service, as the staff has been considerably increased to meet the expanding requirements of our business.

Trusting you will continue to give the same patronage to this company which you have been extending to us in the past, and assuring you of our best services.

We remain,

Yours faithfully,

ALTERATIONS IN MEMORANDUM OF ASSOCIATION

No alteration in the memorandum of association of the company registered under the Indian Companies Act can be effected so as to change the place of the registered office from one province to another or with respect to the objects of the company unless a special resolution in respect of the change desired has been passed and the Court on petition of the company has confirmed such alterations. The provisions relating to such alterations are contained in sections 12, 13, 14, 15 and 16 of the Indian Companies Act.

CHANGE OF NAME

In the case of change of name, Sub-sections 4, 5 and 6 of Section 11 become operative which run as under :—

S. 11 (4) " any company may, by special resolution and subject to the approval of the Central Government signified in writing, change its name.

" (5) where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation. On the issue of such certificate the change of name shall be complete.

" (6) The change of name shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company ; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name."

The change can be made by passing a special resolution after obtaining the approval of the Central Government in writing. The correct procedure would be to obtain the approval of the Government in the first instance and then to

pass a resolution and forward it to the registrar within 15 days from the passing thereof duly certified under the signature of the officer of the company to be filed with the registrar who shall record the same under section 82 of the Indian Companies Act. If a special resolution is passed first and then sent to the Government for approval, the necessary documents cannot be filed within time with the registrar and in the event of the Government refusing to agree to the alteration of the name suggested, the special resolution would become useless. The Central Government has in exercise of the power conferred under section 124 of the Government of India Act, 1935 delegated these powers to the respective Provincial Governments with effect from 1st April, 1938. (*vide* Gazette of India, 26-3-38, Part 1, at 440). The object of requiring the approval of the Government for change of name could only be to see that the provision of section 11 are not infringed so that the new name should not be identical with the name of an existing limited company and that it does not adopt any of the prohibited names mentioned in that section. It would have been more appropriate to confer such

powers on the registrar and if it should be provided under any rule framed therefor that notice should be published in the official gazette, as well as in a newspaper circulating in the province, inviting objections to the proposed names probably it might obviate litigation between companies adopting similar name. However, the Courts in India have to see whether there is such similarity in names that there exists a reasonable probability that the use of the changed name would result in the company's appropriating the material advantage of the business of an existing company and a very high standard of affirmative proof is required to establish the alleged risk of appropriation of the business of the aggrieved company. Thus the claim of the Asiatic Government Security Life Insurance Co. Ltd., was negatived by Mockett J. when it sued the New Asiatic Life Insurance Co. Ltd., for relief by injunction restraining the latter company from carrying on business under that name.¹ The change is not complete until the new certificate of incorporation for which the section provides is issued.² If after the issue of the certificate it is found that the special resolution was not duly passed, the registration of the new name will be vacated on application therefor to the registrar.³

It is expedient, however, to approach the registrar in the first instance in order to ascertain from him whether there is any objection to the proposed name. In such matters the sound as well as spelling of the name will be considered.⁴

A letter to the registrar may be addressed in the following form:—

To

The Registrar,
Joint Stock Companies, Punjab,
Lahore.

The.....Company Limited.

Dear Sir,

In re Change of name of the above company.

The above named company was carrying on business of.....but owing to exigencies of trade and other circumstances and as permitted by the memorandum of association, it is now carrying on the allied business of..... It has, therefore, been considered desirable by the Board of Directors to alter the name of the company into

“The.....Company Limited.”

It is therefore requested that the undersigned may kindly be informed as to whether there is any other company incorporated under a name similar to the proposed name of the company and as to whether there would be any objection to the making of the alteration as suggested.

Yours faithfully,

Secretary.

If the registrar has no objection to such alteration a letter may be addressed to the Provincial Government for its approval to the proposed alteration in the name of the company. This letter may be in the following form:—

1. *Asiatic Government Security Life Insurance Co. Ltd. v. New Asiatic Life Insurance Co. Ltd.*, A. I. R. 1939 Madras 555

2. *Shackleford, Ford & Company v. Dangerfield* L. R. 3 C. P. 407.

3. *Re Australasian Mining Company* (1893) W. N. 74.

4. *Ouwah Ceylon Estates Limited v. Uva Ceylon Rubber Estates Limited* (1901) 103 L. T.

The.....Company Limited

To

The Secretary,
Government of Punjab,
Lahore.

Dear Sir,

In re change of name of the above named company

The above named company is desirous of changing its name from

"The.....Company Limited,"

to

"The.....Company Limited."

in order that the name of the company may more effectually and truly represent the business of the company as the company owing to exigencies of trade is now carrying on the allied business of instead of

It is requested therefore that approval may be given for making such alteration in the name of the company as required under section 11 (4) of the Indian Companies Act 1913.

[It may be observed that the Registrar Joint Stock Companies, Punjab Lahore has not signified any objection to such change when a communication was made to him informing him about the proposed change in the name of the company.]

An early reply is solicited.

Yours faithfully,

Secretary.

The.....Co., Ltd.

Change of Registered Office from one Province to Another

When the memorandum of association has to be changed regarding the location of registered office from one province to another then the procedure prescribed under section 10 of the Indian Companies Act has to be followed. In the first instance, a special resolution has to be passed and a copy of such resolution, printed or typewritten and duly certified under the signature of the officer of the company, must be filed, within 15 days from the passing thereof, with the registrar who shall record the same under section 82 of the Indian Companies Act. Thereafter a petition has to be made to the Court to confirm such alteration. The Court must be satisfied before confirming such alterations that every debenture holder of the company and all persons whose interest will, in the opinion of the Court, be affected by the alteration, have been apprised of such alteration and with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt, or claim has been discharged or has determined or has been secured to the satisfaction of the Court : provided that the Court may in the case of any person or class for special reasons dispense with such notices. A certified copy of the letter confirming such change shall, thereafter, be filed by the company with the registrar in each of the provinces. In case the company fails to get such alterations registered within three months next after the date of the order of the Court confirming the alteration or within such further time as the Court may allow in this behalf, such alteration and order and all proceedings connected therewith shall, at the expiration of the period of three months or such further time as the case may be, become absolutely null and void, provided that the Court may, on sufficient cause shown, revive the order on application made within a further period of one month. The relevant provisions relating to such alterations are printed here :—

12. (1) Subject to the provisions of this Act, a company may, by special resolution, alter the provisions of its memorandum so as to change the place of the registered office from one province to another.

(2) The alteration shall not take effect until and except in so far as it is confirmed by the Court on petition.

(3) Before confirming the alteration, the Court must be satisfied.

(a) that sufficient notice has been given to every holder of debenture of the company and any person or class of persons whose interest will, in the opinion of the Court, be affected by the alteration; and

(b) that, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt, or claim has been discharged or has determined, or has been secured to the satisfaction of the Court.

Provided that the Court may, in the case of any person or class, for special reason, dispense with notice required by this section.

15. (1) A certified copy of the order confirming the alteration together with a printed copy of the memorandum as altered, shall, within three months from the date of the order, be filed by the company with the registrar, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with and thenceforth the memorandum so altered shall be the memorandum of the company.

(2) Where the alteration involves a transfer of the registered office from one province to another, a certified copy of the order confirming such change shall be filed by the company with the registrar in each of the provinces, and each of such registrars shall register the same, and shall certify under his hand the registration thereof, and the registrar for the province from which such office is transferred shall send to the registrar for the other province from which such office is transferred shall send to the registrar for the other province all documents relating to the company registered or filed in his office.

(3) The Court may by order at any time extend the time for the filing of documents with the registrar under this section for such period as the Court thinks proper.

16. No such alteration shall have any operation until registration thereof has been duly effected in accordance with the provisions of section 15, and if such registration is not effected within three months next after the date of the order of the Court confirming the alteration, or within such further time as may be allowed by the Court in accordance with the provisions of section 15, such alteration and order and proceedings connected therewith shall, at the expiration of such period of three months or such further time, as the case may be, become absolutely null and void.

Provided that the court may, on sufficient cause shown, revive the order on application made within a further period of one month.

It will be observed that if it is proposed to change the registered office of the company from one place to another place in the same province it is not necessary to conform to the procedure laid down in Ss. 12, 15 and 16, of the Indian

In such an event it is merely necessary to notify the registrar about the change in the situation of the registered office within 28 days after the date such changes who shall record the same under section 72 of the Indian Companies, Act provided the prescribed fee therefor is paid to him.

FORM

The petition to the Court may be in the following form :
In the High Court of Judicature At Lahore.

In re The Indian Companies Act, 1913 and of the.....Company Limited

Petition of.....Company Limited under section 12 of the Indian Companies Act. In re change of registered office from the province of the Punjab to the province of Bengal.....

The Petitioner company submits as follows:—

1. The company was registered under the Indian Companies Act on..... as a private company limited by shares, having its registered office in the province of Punjab. The situation of the Registered office of the company was at Lahore.

2. That the main business of the said company is that of manufacture of stationery goods for which purpose its factory is established in the suburb of Calcutta.

3. That the company finds it inconvenient to regulate and control its factory establishment and transact its business from such distant place as Lahore and it has been accordingly resolved in a special resolution of the company in a meeting duly held therefor on.....day of.....1946 at 10 A. M. in the registered office of the company that the registered office of the company be shifted from the province of the Punjab to the province of Bengal so that the company may be in close touch with the factory and may be able to transact its business more efficiently and properly. having its registered office at Calcutta

4. That a notice about the proposed change in the registered office of the company with reference to its being shifted to the province of Bengal was given to the share-holders and the debentureholders of the company as well as to the creditors of the company whose interest, it is submitted, will not be prejudicially effected by such change in the situation of the office of the company. No objection has been received from the debenture-holders of the company and from the creditors of the company while the share-holders of the company, as above mentioned, passed a special resolution assenting to such change of the registered office of the company.

A certified copy of the resolution is enclosed herewith.

It is prayed that the memorandum of the association may be allowed to be altered so as to change the registered office of the company from the province of Punjab to the province of Bengal.

The.....Co. Ltd.

Lahore.

Through

Dated.....

Secretary.

Verified that the facts mentioned in the above petition are true to my knowledge and nothing material has been concealed therefrom and nothing is false therein.

Lahore.....

Dated.....

Secretary.

Alteration of Objects Clause

It sometime becomes necessary or expedient to alter the provisions of the memorandum of association with respect to the objects of the company. Either on account of any new invention or mode of conducting business or for the purpose of carrying on any other ancillary trade or manufacture or in order to widen the scope of the activities of the company etc., etc., the company finds itself handicapped owing to the objects enumerated in the memorandum not being wide enough to cover such new purpose. Accordingly it has been provided under section 12 of the Indian Companies Act that subject to the provisions of that Act, a company may by special resolution alter the provisions of its memorandum with respect to the objects of the company so far as may be required to enable it :—

- (a) to carry on its business more economically or more efficiently ; or
- (b) to attain its main purpose by new or improved means ; or
- (c) to enlarge or change the local area of its operations ; or
- (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company ; or
- (e) to sell or dispose of the whole or any part of the undertaking of the company ; or
- (f) to amalgamate with any other company or body of persons.

The alteration shall not take effect until and except in so far as it is confirmed by the Court on petition.

Before confirming the alteration, the Court must be satisfied :—

(a) that sufficient notice has been given to every holder of debentures of the company, and to any person or class of persons whose interests will, in the opinion of the court, be effected by the alteration ; and

(b) that, with respect to every creditor, who in the opinion of the Court, is entitled to object, and who signifies his objection in the manner as directed by the Court either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined or has been secured to the satisfaction of the Court :

Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

The Court will not sanction alterations which would enable the company to carry on any business it might conceivably desire to carry on in the future;¹

Alteration must not conflict with main purpose of the company. nor will the Court permit alteration if the new object would in any way conflict with the main purpose of the company; for instance, if the company is formed for the purpose of protecting the interests of cyclists on the road, the Court will not allow such company to widen its scope by assisting motorists and others, as there would necessarily arise a conflict between the interests of a cyclist and other users of the road.² At the same time the Court will interpret the above provisions relating to alterations liberally so as to enable the company to carry on its business more economically or more efficient-

ly or by new or improved means. The decisions show that Courts have taken into consideration the following matters in permitting or refusing alteration in this behalf :—

Liberal interpretation

1. *John Brown Ltd.*, 112 L. T. 232.

2. *In re Cyclists Touring Club*, (1907) 1 Ch. 269.

(a) the main business or character of the company must remain as heretofore, *i.e.*, if the alteration leaves the business of the company substantially what it was before, the Court will not hesitate to allow such alteration.¹

Main business to remain.

(b) the alteration should not be destructive of the main purpose of the company, but the additional business sought to be carried under the proposed alteration should be one which may conveniently or advantageously be carried on at the time of the proposed alteration;² such additional business may be different from the original business and in judging whether a particular business is convenient and advantageous the Court should have regard to the experience and the opinions of traders, as it is a business question to be determined primarily by those carrying on the existing business.³

Alteration a business proposition.

(c) if the proposed alteration would be inconsistent with the name of the company, the Court may impose a condition insisting on the change to be made in the name of the company so as to avoid any inconsistency. Thus if a company's name restricts its activities within a certain country and it is sought to extend the business of the company to other countries, the alteration may be allowed on the condition that the name of the company is also changed. The 'Indian Mechanical Gold Extracting Co. Ltd.' asked for the Court's sanction to an alteration of its memorandum, whereby the company's field of activities could be extended to any part of the world. Romer, J., gave the orders sanctioning the alteration but conditional upon the word "Indian" being changed so that there would be no indication that the sphere of the company's operation was limited to India.⁴

Name may be required to be altered.

The exercise of the power is fenced round by safeguards which are calculated to protect the interest of creditors, the interests of shareholders and the interests of the public. Creditors are protected by express provisions. Their consent must be procured or their claims must be satisfied. The public, the shareholders, are protected by the necessary publicity of the proceedings and by the discretion which is entrusted to the Court.⁵ If the creditors' rights are not affected, they may be refused audience. Alteration of memorandum of association is usually a domestic affair and it is ordinarily the shareholders who have interest in the company and who are to be considered⁶ and the Courts have exercised their power of sanction liberally but within the four corners of the conditions mentioned (a) to (f) above⁷. It must be observed, however, that if a company has ceased to carry on business and is merely realising its assets or clearing its dues from its debtors it may not be allowed to

alter its objects to carry on other business which it considers that it could be advantageously combined with its old or main business. Bennett, J., refused sanction in such a case and remarked: "At the moment the company is not carrying on any business at all, it is not trading. It is suggested that the collection of outstanding book debts in respect of its past trade is a business which the company is carrying on. I do not take that view of the matter.....The alteration of the memorandum is desired solely for the purpose of enabling the company not to come under a liability under income tax. If it is fortunate enough to make capital profits as a result of the investment of the cash it is now unable to employ, I do not think that there is any business being carried on by the company with which

Alteration not to be sanctioned if company is not carrying on its business

1. See *In re. Scientific Poultry Breeders' Assn. Ltd.*, (1933) 1 Ch. 227.

2. *In re Parent Tyre Co.* (1923) 2 Ch. 222.

3. *National Boiler Ins. Co.*, (1892) 1 Ch. 306; *In re Parent Tyre Co.*, (1923) 2 Ch. 222.

4. *In re. Indian Mechanical Gold Extracting Ltd.*, (1891) 3 Ch. 538.

5. *In re Jewish Colonial Trust Ltd.*, (1908) 2 Ch. 287, 299.

6. See *In re. Hearts of Oak Life Etc. Ass. Co. Ltd.*, (1920) 1 Ch. 544, 550

7. *In re New West Minister Brewery Co.*, (1911) W. N. 247.

the business of a Trust Investment Co. can either conveniently or advantageously be combined.¹

Section 13 of the Indian Companies Act provides that Court may make an order conforming the alteration either wholly or in part and on such terms and conditions as it thinks fit and may make such order as to costs as it thinks proper. Section 14 of the same Act further provides :

“The Court shall, in exercising its discretion under sections 12 and 13 have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of the dissentient members ; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement, provided that no part of the capital of the company may be expended in any such purpose.

Exercise of discretion by Court.

The procedure on confirmation of the alteration and the effect of failure to register the alteration within the period prescribed is incorporated under sections 15 and 16 of the Act which have already been quoted above.

The next class of cases where the memorandum may be desired to be changed is when it is sought to alter the recitals in the capital clause of the memorandum, because of increase, reduction or re-organisation of capital. Section 50 of the Indian Companies Act provides as under :—

Change of capital clause.

“S. 50.(1) A company limited by shares, if so authorised by its articles, may alter, the conditions of its memorandum as follows (that is to say), it may :—

(a) increase its shares capital by the issue of new shares of such amount as it thinks expedient;

Power of company limited by shares to alter its share capital

(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares ;

(c) convert all or any of its paid up shares into stock and reconvert that stock into paid up shares of any denomination ;

(d) subdivide its shares or any of them into shares of smaller amount than is fixed by the memorandum, so however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived ;

(e) cancel shares which, at the day of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person and diminish the amount of its shares so cancelled.

(2) The powers conferred by this section must be exercised by the company in general meeting.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

(4) The company shall file with the registrar notice of the exercise of any power referred to in clause (d) or (e) of sub-section-within 15 days from the exercise thereof.”

It will be observed that the alteration of the memorandum regarding the recital of capital clause can be simply made by passing a resolution in general meeting and there is no need to seek either the sanction of the Court or of the Provincial or other Government in this behalf.

No sanction of Court or govt. necessary

1. *In re Drages Co.*, (1842) A. E. R. 194.

Reconstructions or Amalgamation of the Company.

Sometimes it becomes necessary to reorganise the company and for such purpose a scheme or arrangement may be arrived at by a large majority of the share-holders in a meeting convened for such purpose and the proposed scheme or arrangement is then confirmed by the Court whereupon the scheme or arrangement becomes effective from the date the majority agrees to it.¹ The arrangement contemplated may be, as for example, for issue of fully paid up shares in a company for satisfaction of debentures,² for sale of assets for shares in a new company;³ or when one class of shareholders give

Arrangement up a portion of their shares to another class, or re-organisation of capital is desired involving interference with the rights of preference shareholders, etc, etc. Sometime amalgamation is desired by two companies which desire to combine together in order to carry on the business in a consolidated form.

Amalgamation. Amalgamation contemplates a state of things under which two companies are so joined as to form a third entity or one company is absorbed into and blended with another company.⁵

The procedure for the completion of such arrangements or for amalgamation of companies is prescribed in sections 153 153-A and 153-B of the Indian Companies Act. It will be observed that first of all the company or the members of the company make an application to the Court in a summary way asking the Court to direct a meeting of members or class of members, as the case may be, to be held or conducted in such manner as the Court directs. If there are different classes of members, separate meeting of each class must be held. If a majority in number representing three fourths of members or class of members, as the case may be, present either in person or by proxy at the meeting, or at each separate meeting of the different classes of members, agree to the scheme or arrangement the matter is reported to the Court and the Court thereupon considers whether sanction is to be accorded to such arrangement or scheme. If the sanction is so accorded it becomes binding on all the members or class of members, as the case may be, and also on the company. A certified copy of the order of the Court has to be filed with the registrar and a copy of such order has to be annexed to every copy of the memorandum of the company issued after the order has been made. If the scheme is for the re-construction of any company or companies or the amalgamation of two or more companies or under the scheme the whole or any part of the undertaking or the property of the company concerned in the scheme is to be transferred to another company, the Court may so direct either in the order sanctioning the scheme or in a separate order. Provision is also made for dealing with the shares of those dissenting members who are not agreeable to such scheme or arrangement or amalgamation in section 153 B of the said Act. The above mentioned statutory provisions are printed below for reference :—

“153 (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members of any class of them, the Court may, on the application in a summary way of the company or of any creditors or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

Power to compromise with creditors and members.

-
1. *Rugbar Dyal Vs. Bank of Upper India Ltd.*, 46 I. A. 135.
 2. *In re Empire Mining Company*, 44 Ch. D. 402; *Slater Vs. Dalaston Steel & Iron Company*, (1877) W. N. 139
 3. *In re Sandwell Park Colliery Company*, (1914) 1 Ch. 589
 4. *In re Palace Hotel Company* (1912) 2 Ch. 438. The memorandum can be altered by a scheme under such an arrangement. See page 442.
 5. *In re Walker's Settlement*, (1935) Ch. 567

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on all the members or class of members, as the case may be, and also on the company, or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under sub-section (2) shall have no effect until a certified copy of the order has been filed with the registrar, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with sub-section (3) the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(5) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against a company on such terms as it thinks fit and proper until the application is finally disposed of.

(6) In this section the expression "company" means any company liable to be wound up under this Act and for the purposes of this section unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

(7) An appeal shall lie from any order made by the Court exercising original jurisdiction under this section to the authority authorised to hear appeals from the decisions of the Court.

„153A. (1) Where an application is made to the Court under section 153 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in the section referred to as a 'transferor company') is to be transferred to another company (in this section referred to as the 'transferee company') the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matter.—

Provisions for facilitating arrangements and compromises.

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company ;

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person ;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company ;

(d) the dissolution without winding up, of any transferor company ;

(e) the provision to be made for any persons who within such time and in such manner as the Court directs dissent from the compromise or arrangement ;

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a certified copy thereof to be delivered to the registrar for registration within fourteen days after the completion of the order, and if default is made in complying with this sub-section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty rupees.

(4) In this section the expression 'property' includes property, rights and powers of every description, and the expression 'liabilities' includes duties.

(5) Notwithstanding the provisions of sub-section (6) of section 153, the expression 'company' in this section does not include any company other than a company within the meaning of this Act.

S, 153-B. (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as 'the transferor company') to another company, whether a company within the meaning of this Act or not (in this section referred to as the 'transferee company') has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than three-fourths in value of the shares affected

Power to acquire shares of shareholders dissenting from schemes or contract approved by majority.

the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company:

Provided that, where any such scheme or contract has been so approved at any time before the commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936), the Court may by order, on an application made to it by the transferee company within two months after the commencement of that Act, authorise notice to be given under this section at any time within fourteen days after the making of the order and this section shall apply accordingly, except that the terms on which the shares of the dissenting shareholders are to be acquired shall be such terms as the Court may by the order direct instead of the terms provided by the scheme or contract.

(2) Where a notice has been given by the transferee company under this section and the Court has not on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(4) In this section the expression 'dissenting shareholder,' includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

It is not necessary that if requisite majority of the members of the company approve of the proposed arrangement scheme or amalgamation, the Court must sanction the same. The Court has a wide discretion in the matter and may refuse to sanction the same even if the requisite majority assents to it,¹ for the Court must be satisfied that the scheme is a proper and fair one², is made in good faith³ and the minority has not been over-riden by the majority having interest clashing with that of the minority whom they seek to coerce. Lord Lindley, L. J., in *re Alabama*, remarked as follows:—

"What the court has to do is to see first of all, that the provisions of that statute have been complied with and, secondly that the majority has been acting *bona fide*. The court has also to see that the minority is not being over-riden by a majority having interest of its own clashing as those of the minority whom they seek to coerce. Further than that, the court has to look at the scheme and see whether it is one as to which person acting honestly and viewing the scheme laid before them in the interest of those whom they represent, take a view which can be reasonably taken by business men. The Court must look at the scheme, and see whether the Act has been complied with, whether the majority are acting *bona fide*, and whether they are coercing the minority in order to promote interests adverse to those of the class whom they purport to represent and then see whether the scheme is a reasonable one or whether there is any reasonable objection to it, or such an objection to it as that any reasonable man might say that he could not approve of it."

It must be noted that where directors of a company induce some of the shareholders to give up their options to purchase their shares for securing consent of the majority to an amalgamation and upon an amalgamation the directors make profits, the directors shall be deemed to be trustees of the profit for the benefit of such shareholders.⁴

CHAPTER VI

The Management and Working of the Registered Office.

Having received the certificate of incorporation from the Registrar, a private company comes into existence and it can start business forthwith without obtaining the commencement certificate as in the case of a public company. But before starting business transactions, it is the duty of the principal officer of

the company to see that all the requirements of law relating to the management of the registered office are completed. As has been stated already, one of the objects of the Companies Act is to put business into regulated channels, and the underlying idea in getting compliance with the formalities of the law is to enforce efficiency in management.

1. In *re. People Bank of India Ltd.*, (1933) Lah. 61.

2. In *re. Empire Mining Company*, 44 Ch. D. 402.

3. In *re. Alabama, New Orleans Etc. Railway Company*, (1891) 1 Ch 213; see also in *re. English, Scottish & Australian Chartered Bank*, (1893) 3, Ch. 385, 408, 409.

9. *Chunilal v. Bank of Upper India*, 40 I. C. 904.

These formalities should therefore be viewed as a boon and clearly understood and followed. In the case of a new business compliance with the requirements of law automatically brings into existence a well equipped office, only if the promoters of the concern are a little modernised in their outlook and know the utility of an up-to-date office, as compared with the jumbled and heterogeneous modes of carrying on day to day work as the exigencies of business require. One cannot help remarking that in India the advantages of organised business houses with up-to-date accounts has not yet been realised and generally business is carried on with a meagre staff and equipment in order to make immediate savings and the long term view is lost sight of.

Registered office.—The first thing to be done after incorporation is to determine the place where the registered office of the company is to be situated within the province stated in the memorandum of association, and to send a notice under S. 72 giving the address of the registered office where the communications to the company are to be addressed.¹ If this has been done already and the return as stated in the previous chapter has been sent with the memorandum of association and other papers, then the next

Notice board to be put up. step is to put a *board* with the name of the company painted in English and easily legible at a conspicuous place where the business of the company is carried on,² and if

business is carried on beyond the jurisdiction of a High Court, then in the characters of one of the vernacular languages of that place. A *common seal* of the company should be ordered on which the name of the company should be engraved in legible characters.³ It is also imperative that

Seal. the name of the company should appear in legible English characters in all bill-heads, letter papers, notices, advertisements and other official publications of the company, and in all bills of exchange, hundies, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company and in all bills of parcels, invoices, receipts and letters of credit of the company. (S. 73). Penalties

Company's name on all its communications and papers. are provided in S. 74 for non-compliance with the above provisions. In the event of failure to give the correct name of the company, the directors and managers are held personally liable. Therefore utmost care is to be taken that the name of the company appears on all the papers issued on behalf of the company.

Registers to be kept by the Company

Besides the above stationery which will have to be printed, the following books and registers should be ordered, the maintenance

Book and registers necessary. of which is essential under various sections of the Act :—

1. Register of members.
2. Register of proceedings of the directors.
3. Register of proceeding of the general meetings of the company.
4. Register of directors, managers etc.
5. Register of contracts in which directors are interested.
6. Register of applications and allotment of shares.

1. In *re. Jan Bazar Manna Estate*, 58 Cal. 716, mere resolution of change of office is not sufficient. *Dawson's Bank v. Kyaiklat Municipality*, 14 R. 187, appears to deal with the question of fact whether notice reached the company or not, under S. 72 of Burma Companies Act. See S. 73.

2. If office is situate in a building within a compound, notice on the outside of the office is sufficient. It need not be affixed outside the compound gate. *Dr. Baltiwala's case* I. L. R. 1941 Bom, 186.

3. S. 90 & 91 Indian Companies Act. See in this connection 8 Halsbury 2nd (Ed.) Paras 17, 163.

We shall deal with the above books in the order in which they are mentioned.

1. **The Register of Members.** No particular form has been prescribed by the Act in this behalf. All that is required is that it should contain the particulars mentioned in S 31 of the Act. S. 31 runs as follows :—

S. 31. (1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars :—
Particulars in register of members.

(i) the names and addresses, and the occupations, if any, of the members and, in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member ;

(ii) the date at which each person was entered in the register as a member ;

(iii) the date at which any person ceased to be a member.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues ; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

It is clear from the section itself that one or more books can be kept for the purpose. This facility has been allowed because in certain companies where the membership is very large, it becomes difficult to keep the records in one register, sometimes when a register already started gets finished then a fresh register has to be continued along with it. As the membership in a private company is limited no practical difficulty arises in this behalf. If there is a substantial compliance with the requirements of the Act, a register is not invalidated on account of slight deviation from the directions given in the Act or by any omission or defect in the particulars of information specified in the section.¹

It should however be noted that the company has not to enter in the register or the share certificate a statement of any lien on the shares.² As a matter of fact the register should not contain any extraneous matter except what is required under the Act. The shares should not be entered in the register in the firm's name³. In such a case the only alternative is to enter the names of the members of the firm as owners of the shares. Joint holders of shares can have their names entered in the register of members in such order as they choose.⁴ Further S. 33 provides that notice of any trust express, implied or constructive shall be entered on the register. The register is of course primary evidence in determining as to whether a certain person is a member of the company or not. For a suit against a shareholder to enforce liability in respect of his shares, time runs from the date on which his name is entered in the register of members.⁵

Lien on shares.
Firm as shareholder
Joint holders.
Register *prima facie* evidence of membership.

1. *Alliance Financial Corporation*, (1866) 3 Bom. H. C. R. 166.

2. *W. Key & Son Ltd*, (1902) 1 Ch. 467.

3. *Vagliano Anthracite Collieries*, (1910) W. N. 187, 103 L. T. 211. If, however, the name of the firm is by any chance entered, the partners become members, *Weikersheim's Case*, 8, Ch App. 881, distinguished in *London, Bombay etc. Bank Ltd v. Bhanji Zutani*, 2 B. 116.

4. *T. H. Saunders & Co.*, (1908) 1 Ch. 415 ; *Burns v. Siemens Bros*, (1919) 1, Ch. 225.

5. *Chota Lal v. Dalsukhram* (1893) 17 Bom 472.

The register of members is the creditors' guarantee showing there to whom and to what they have to trust and must consequently be properly kept so that the names appearing there are all the names of the persons really for the time being liable to the creditors.¹

As the Indian Companies Act becomes applicable immediately after the Company is registered, it is necessary that until the register of members is written up, the allotment book or the list of application register should be made to serve the purpose of the Register of members and all the necessary particulars should be shown therein.² The register of members is *prima facie*

Register *prima facie*
evidence of
necessary particu-
lars entered
therein.

evidence of any matter directed or authorised by the Act to be entered therein. (S. 40). If a person who has agreed to be a member but is not included on the register of members, the Court may rectify the register upon winding up of the company.³ Fraudulent removal of the name of a person to save him from his liability from the winding up

proceedings can be rectified and a person whose name has been wrongly removed remains a member.⁴ Similarly rectification in the case of a person who has been entered in the register but may not have agreed to take the shares, or if he

Rectification
register.

has been induced to take the shares by misrepresentation can be made. In the latter case the member must prove by direct evidence that the statements relied upon

by him were false.⁵ He is not entitled to rely on admissions made by the chairman or on the report of an expert employed by the company.⁶ The circumstances in which a person can seek the protection of the Court for rectification of the register are given in S. 38, which is reproduced below :—

S. 38. "(1) If:—

(a) the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members of a company ; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member, the person aggrieved, or any member of the company, or the company,

Power of Court. to
rectify register

may apply to the Court for rectification of the register.

(2) The Court may either refuse the application, or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.

(3) On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members on the one hand and the company on the other hand ; and generally may decide any question necessary or expedient to be decided for rectification of the register :

Provided that the Court may direct an issue to be tried in which any question of law may be raised ; and an appeal from the decision on such an issue shall lie in the manner directed by the Code of Civil Procedure, 1908, on the grounds mentioned in S. 100 of that Code.

1. *Ramesh v. Jogini*, (1920) 47 Cal. 901 at p. 906.

2. *Exp. Cammell* (1896) 2 Ch. 392.

3. *Arot's case* (1887) 36 Ch. D 705 at p. 707.

4. *Barton v. London & N. W. Rail Co.*, (1889) 24 Q. B. D. 77.

5. *London Electrobuss Co.*, 21 T. L. R. 677.

6. *D. Jambli Rubber Estate*, (1912) W. N. 192 ; on appeal 29 T. L. R. 28, 107, L. T. 631.

Annual List of Members and Summary

The annual list of members and summary that is to be forwarded to the Registrar under S. 32 within 21 days of the holding of the first or the annual general meeting in the year, which has been discussed in detail at a later stage, is to be kept along side the register of members. This is provided in subsection 3 of S. 32. The convenient course is to keep a register in which the returns submitted to the registrar under S. 32 are kept verbatim from time to time.

Register of Minutes of Proceedings of the Directors Meetings and General Meetings

The manner and the circumstances under which these registers are to be maintained and the penalty provided for default are stated in S. 83 which states .—

S. 83. (1) Every company shall cause minutes of all proceedings of general meeting and of its directors to be entered in books kept for that purpose.

Minutes of proceedings of general meetings and of its directors.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Until the contrary is proved, every general meeting of the company or meeting of directors in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly called and held, and all proceedings had thereat to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid.

(4) The books containing the minutes of proceeding of any general meeting of a company held after the commencement of the Indian Companies (Amendment) Act, 1936, shall be kept at the registered office of the company and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose so that no less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(5) Any member shall at any time after seven days from the meeting be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any minutes referred to in sub-section (4) at a charge not exceeding six annas for every hundred words.

(6) If any inspection required under sub-section (4) of this section is refused or if any copy required under sub-section (5) of this section is not furnished within the time specified in sub-section (5) the company and every officer of the company who is knowingly and wilfully in default shall be liable in respect of each offence to a fine not exceeding twenty-five rupees and to a further fine not exceeding twenty-five rupees for every day during which the default continues.

(7) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

Difficulty is sometimes felt in recording the proceedings of the meeting of the directors and general meeting, because men of ordinary education are not supposed to have such an intimate knowledge of English so as to be able to record the proceedings correctly and in a proper form. This is no doubt a handicap, and an attempt will be made to give here in as clear terms as possible the method in which these proceedings may be kept and recorded. No direction as to the language in which they are to be kept has been given in the Act. Therefore the proceedings of the directors can be recorded in Urdu or Hindi and there should be no legal objection to it.

Language of the proceedings.

Minutes of Directors Meeting. As to what should be the contents of the minutes of the directors meeting has been amplified by Kekewich J.¹ "Directors ought to place on record either in formal minutes or otherwise the purport and effect of their *deliberations* and conclusions; and if they do this insufficiently or inaccurately they cannot reasonably complain of inferences different from those which they allege to be right."

This minute book is of very great importance, as it is likely to be called in a Court of law both in connection with the company's affairs and for the settlement of disputes between shareholders and even outsiders. It should be maintained with utmost care and in a very neat form. All elements involving suspicion should as far as possible be removed. Because of its great evidentiary value² it is required to be kept and written in a bound register and any attempt to keep it in a loose leaf form will be a departure from the correct procedure.

Loose leaf minute book
inadmissible in
evidence.

It was held in *Hearts of Oak Assurance Co. v. Fowler*,³ that entries made in a number of loose leaves fastened together in two covers were not admissible in evidence as minutes within the meaning of this section. In such a physical condition at any moment, if any one wished to do so, he could take any number of leaves out and substitute any number of other leaves. A thing in such a form was considered not to be a book within the meaning of this section. As the book is to be maintained for the life time of the company, it should be leather bound with a sufficient strong paper. Very often a little space in the register is set apart in the beginning for recording the attendance of the directors. Before the minutes of the proceedings are written a notice convening the meeting should be recorded along with the agenda. This will provide evidence of the fact that due notice for the meeting had been given. While recording minutes at least two inches space should be left on the left hand side, which may be ruled and at the top of each page in the margin should be written the date of the meeting. This will provide easy reference and avoid waste of time and in searching out resolutions. We give below a form in which the minutes may be recorded.

Notice of meeting of
directors and agenda

Minutes of the Board Meeting held on.....day of.....
19 at atP.M.

Present.

- | | |
|--------------|--------------|
| (1) Mr. | Chairman. |
| (2) Mr. | } Directors. |
| (3) Mr. | |
| (4) Mr. | Secretary. |

[(If the Chairman is not present,) Mr , in the absence of the Chairman, was voted to the chair].

1. *Liverpool Household Stores Association*, (1890) 59 L. J. Ch. 616. Inspection by members may be provided for, *Rameswar Lal v. Calcutta Wheat etc. Ltd.*, A. I. R. 1938 Cal. 89, but it is inadvisable to do so.

2. Minutes are *prima facie* though not conclusive evidence of the proceedings and of the resolutions passed, *Rebello v. Co-operative Navigation Co.*, A. I. R. 1925 Bom. 105. Where it is alleged that any resolution not recorded in the minutes was in fact discussed and passed at a meeting, express evidence to prove this fact may be given: *Re. Fire Proof Doors*; (1916) 2 Ch. 142. The onus is on the party who alleges contrary to what is recorded in the minutes. In *re. Indian Zoedone Co.*, (1884) 26 Ch. D. 77 per Lord Selborne. The secretary has no authority to add to the minutes what was not actually passed e. g., he cannot insert 'dates' for making calls when the directors did not resolve accordingly. In *re. Cawley & Co.*, (1889) 42 Ch. D. 209. See also *Pioneer Alkali Works Ltd. v. Amir-ud-Din* 50 B. 461; *Bhagirath etc. Co., Ltd. v. Balaji* 54 B. 178.

(3) 1936, 1 Ch. 76.

1. Confirmation of minutes. The minutes of the last board meeting held on..... where read over and confirmed and ordered to be signed.
Record of proceeding of directors' meetings.
2. Accounts. Considered balance-sheet and profit and loss account for the year ending alongwith the auditor's report. The details of the items appearing under various heads including those of assets and investments of the company appearing in the balance-sheet were placed before the directors for their information.
Resolved that the balance-sheet and profit and loss account be and is hereby passed for being placed in the General Meeting after adoption.
Considered draft report, recommending a dividend ofper cent. (free of income-tax) to preference shareholders and.....per cent. for ordinary shareholders with provision for bonus dividend and amounts to be carried to reserve fund, signed by the chairman for identification.
Resolved that the above be and is hereby approved for being attached to the balance-sheet as directors' report for the year.....
3. Directors' report. Resolved further that the chairman be and is hereby authorised to sign the report on behalf of the directors.

Other resolutions will assume more or less similar form. At the conclusion provision should be made for the signature of the chairman and the secretary. We give below the usual agenda for the first board meeting :—

Agenda Boards Meetings.

To be held onday of 19 at(P. M.)
at the registered office of the company.

Agenda for board's meetings.

1. To elect a chairman and fix the period for which he is to continue in office.
2. To receive the report that the company has been duly registered.
3. To fix the quorum of board meeting (if not provided for by the articles of association).
4. To submit the company's seal for approval.
5. To pass a resolution regarding custody of the seal.
6. To appoint bankers of the company.
7. To appoint auditor of the company.
8. To appoint managing director or general manager or secretary, as the case may be, of the company at a salary of Rs. p.m.
9. To adopt vendors' agreement referred to in clause of the memorandum and regulation of the articles of association of the company.
10. To authorise the execution of a general power of attorney in favour of the managing director (or the general manager or the secretary, as the case may be.)

11. To authorise sealing of certificates, passing of transfers and affixing of seal to other documents as permitted by the articles of association.

12. To form a sub-committee of the Board of Directors for making allotment of shares.

Secretary.

From the above form for minutes of directors' meetings it will be seen that every resolution should have a heading. This is again provided for the purpose of easy reference. Usually the resolutions of the directors are referred to by giving reference of number and date. For instance No. 12 of 19th January, 1940. But it is suggested that it would be more convenient to give serial numbers to all the Resolutions passed during the year and they can then be referred to easily by giving the number of the resolution and the year e.g., No. 58 of 1946. As regards the subject matter of the resolutions no doubt arguments are not necessary, but it is always better to state in brief the facts on which the decision was based. If the matter is likely to prove contentious and there is probability of the resolution being required by some authority for looking into its plausibility and reasonableness, then the central arguments may also be incorporated in an abbreviated form in the resolution.

It is usual to confirm the minutes of the previous Board Meeting in the subsequent meeting. In the first place it helps to rectify errors and it also doubly affirms the Resolutions already passed by the board, removing all doubts of ambiguities. Therefore the first resolution of a meeting should be regarding the confirmation of the minutes of the previous board meeting.

Signing of the Minutes. The minutes to be valid must be made within a reasonable time and signed by the Chairman.¹

It cannot be expected that as soon as the board meeting is over the decisions of the Board in an acceptable form expressing the exact intention of the directors should be ready for signature of the chairman. Different procedure is adopted by different companies. The ideal state would be that the secretary or the chairman of the company should be so capable that he should go on transcribing the decisions of the directors in the proceedings books straightway, but then there is every possibility of the minutes being scribbled and later on it may be difficult to make out as to what has been written. This task is ordinarily left to a man having a good handwriting who can copy down the resolutions. Therefore it is suggested that along with a fair minute book, a rough proceedings book should be started, in which the agenda for the meeting should be noted on the half page and the decision of the board should be noted in the handwriting of the chairman or the secretary on the other half against each item of the agenda. It should be signed by the chairman at the conclusion of the meeting. The minutes can then be re-produced in a proper form, and then re-written in the fair Minute Book. At the time of the confirmation in the next board meeting the chairman of that meeting can sign the written down proceedings.

The minutes are no doubt *prima facie* evidence of what happens at the meeting² (), and if the books of the company show the record of a resolution the Court will presume that such a resolution has been passed.³ But an unrecorded resolution can be

1. *Toms v. Cinematrust Co.*, (1915) W. N. 29; *Southampton Docks Co v. Richards*, (1840) 1 man & g. r. 448: on signature by Chairman minutes become *prima facie* correct evidence of the proceedings. Followed in 3 B. H. C. R. O. 106.

2. *Rebello v. Co-operative Navigation Co.*, A. I. R. 1925 B. 105.

3. See *Kerr v. John Mottram Ltd.*, (1940) 1 Ch. 657.

proved.¹ Minutes once signed should not be altered.²

The method of recording the proceedings of a general meeting and the maintenance of the minute book has been explained under the heading "ordinary general meeting."

4. Register of Directors, Managers, etc.

S 87. of the Act prescribes that a register should be maintained of all the directors, managers and managing agents of the company, and any changes taking place should be promptly communicated to the registrar and this information should be available to the shareholders. This section is reproduced below :—

S. 87. (1) Every company shall keep at its registered office a register of its directors, managers and managing agents containing with respect to each of them the following particulars, that is to say—

(a) in the case of an individual, his present name in full, any former name or surname in full, his usual residential address, his nationality and if that nationality is not the nationality of origin, his nationality of origin and his business occupation, if any, and if he holds any other directorship or directorships the particulars of such directorship or directorships.

(b) in the case of a corporation, its corporate name and registered or principal office; and the full name, address and nationality of each of its directors, and

(c) in the case of a firm, the full name, address nationality of each partner, and the date on which each became a partner.

(2) The company shall within the periods respectively mentioned in this sub-section send to the registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors, managers or managing agents or in any of the particulars contained in the register.

The period within which the said return is to be sent shall be a period of fourteen days from the appointment of the first directors of the company and the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof.

(3) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of one rupee or such less sum as the company may impose for each inspection.

(4) If any inspection required under this section is refused or if default is made in complying with sub-section (1) or sub-section (2) of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine of fifty rupees.

(5) In the case of any such refusal the Court on application made by the person to whom inspection has been refused and upon notice to the company may by order direct an immediate inspection of the register.

Under this section the term 'Manager' has been used in the same sense as its definition under S. 2(9), that is, the person incharge of the whole affairs of the company, subject to the control of the directors. Therefore the person incharge of a branch does not come within the purview of the term manager as used under this section.³

1. *Re. Pyle Works* (No. 2) (1891) 1 Ch. 173, 184; *Re. Fireproof Doors*, (1916) 2 Ch. 142; *Tothill's case*, L. R. 1 Ch. App. 85. As regards directors, see *Rotherham Alum etc. Co.*, (1883) 25 Ch. D. 103, 109.

2. *Re Cowby & Co.*, (1889) 42 Ch. 209, 226.

3. *Basnis v. Emp* (1917) 19 Cr. L. J. 215, 43 L. C. 79.

The period within which the return is to be sent has been prescribed as 14 days from the happening of the change. A form for this register has been provided giving the particulars required by this section.

Particulars of Directors, Managers and Managing Agents and of any changes therein.

THE INDIAN COMPANIES ACT, 1913.

(See Section 87.)

Filing Fee Rs. 3.

Name of Company _____

Presented for filing by _____

The present Christian Name or names and surname (a) (d)	Any former Christian name or names or surname.	Nationality.	Nationality of origin (if other than the present Nationality.	Usual residential address.	Other business occupation and Directorships if any. If none state so (b).	Date of appointment or change.	Changes (c).

Signature.

Designation.

(State whether Director, Manager or Managing Agent (s)).

Dated the _____ day of _____ 194

(a) In the case of a corporation its corporate name and registered or principal office should be shown.

(b) The individual's primary business, occupation and particulars of all other directorships held by him must be entered.

(c) Particulars of change among directors, managers or managing directors should be sent to the registrar. A note of the changes since the last list should be made in this column, e.g. by placing against a new Director's name the words "in place of....." and by writing against any former director's name change caused by death/resignation/retirement/removal/rotation/disqualification.

(d) In the case of a firm the full name, address and nationality of each partner and the date on which each became a partner.

This return is to be filed by the officers responsible for the management of the registered office and as such it is better to recapitulate at every Board Meeting if any such change has occurred, otherwise there is always the danger of losing sight of such changes.

5. Register of contracts in which a Director is interested

This register is to be maintained in accordance with the provisions of S. 91 S. A which provides that every director should disclose his interest in all contracts or arrangements into which the company enters. As one is likely to forget such disclosure at times it has been provided that a general notice by a director that he is so interested would be considered sufficient. The section further requires that a register should be kept of all such contracts in which the directors are interested. Penalties have been provided for the officers who are knowingly responsible for this default as well as for the directors who do not disclose their interests. This section is therefore very important and should be clearly grasped. S. 91A is reproduced below :—

91. A (1) Every director who is directly or indirectly concerned Disclosure of interest or interested in any contract or arrangement by director. entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement :

Provided that a general notice that a director is a director or a member of any specified company or is a member of any specified firm and is to be regarded as interested in any subsequent transaction with such firm or company, shall as regards any such transaction be sufficient disclosure within the meaning of this sub-section and after such general notice, it shall not be necessary to give any special notice relating to any particular transaction with such firm or company.

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding one thousand rupees.

(3) A register shall be kept by the company in which shall be entered particulars of all contracts or arrangements to which sub-section(1) applies, and which shall be open to inspection by any member of the company at the registered office of the company during business hours.

(4) Every officer of the company who knowingly and wilfully acts in contravention of the provisions of sub-section (3) shall be liable to a fine not exceeding five hundred rupees.

Before discussing the methods of safeguarding the interest of the company and the directors in this respect it would be convenient to consider here the provisions of S 86 F which is similar in operation and for which a heavier penalty (viz., that of the director ceasing to hold office) has been provided. The relevant sections on this subject are as follows :—

S. 86 F. Except with the consent of the directors, a director of the company, or the firm of which he is a partner or any partner of such firm, or the private company of which he is a member or director, shall not enter into any contract for the sale, purchase or supply of goods and materials with the company, provided that nothing herein contained shall affect any such contract or agreement for such sale, purchase or supply entered into before the commencement of the Indian Companies (Amendment) Act. 1936.

S. 86 I. (1) The office of a director shall be vacated if :
Vacation of office of director.

(a) he fails to obtain within the time specified in sub-section (1) of S. 85, or at any time thereafter ceases to hold the share qualification, if any, necessary for his appointment, or

(b) he is found to be of unsound mind by a Court of competent jurisdiction, or

(c) he is adjudged an insolvent, or

(d) he fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made, or

(e) he or any firm of which he is a partner or any private company of which he is a director without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a managing director or manager or a legal or technical advisor or a banker, or

(f) he absents himself from three consecutive meetings of the directors or from all meetings of the directors for a continuous period of three months whichever is the longer without leave of absence from the board of directors, or

(g) he or any firm of which he is a partner or any private company of which he is a director accepts a loan, or guarantee from the company in contravention of section 86 D, or

(h) he acts in contravention of section 86 F.

2. Nothing containing in this section shall be deemed to preclude a company from providing by its articles that the office of director shall be vacated on grounds additional to those specified in this section.

From a perusal of section 91A of the Indian Companies Act, as amended it is clear that the shareholders have been enabled to obtain information about contracts in which the Directors are interested. This section not only covers contracts entered into at a meeting of the Directors but they also include contracts not made at a meeting of Board of Directors. The contracts envisaged in this section include even petty purchases from another firm in which the purchasing director is interested.¹

The duty to disclose the interest of the Director, with respect to transactions entered into by him with the company or for the company, is based on the principle that no person acting as an agent can be allowed to put himself in a position in which his interest and duty will conflict.² The interest need not merely be a pecuniary interest, but even mere relationship as that of husband and wife, or father and son, is interest, if the circumstances are such that it may reasonably be regarded as affecting the director's mind.³

This principle is observed so strictly that no question is even allowed to be raised as to the fairness or unfairness of a contract entered into by a director of the company.⁴

Sarkar, in his commentary on the Indian Companies Act, is of the opinion that having regard to the wording of the section it is doubtful whether any disclosure is necessary in the case of such contracts which do not come up in the ordinary course before directors for confirmation, for instance, contracts which the Managing Director is authorized by a general resolution of the directors to enter into on behalf of the Company, or contracts which for some other reason have not got to be brought up before the board of directors for sanction.⁵

1. *Robindra v. Emperor*, A. I. R. 1938 Cal. 440

2. *Parker v. McKenna*, 10 Ch. App. 60

3. *Venkatachalapathi v. Gunter Mills*, A. I. R. 1929 Mad. 353, affirmed in A. I. R. 1932 P. C.

4. *Bray v. Ford*, (1896) A. C. 40, 51 and 52.

5. At page 246

It appears that the legislature is not content with imposing a penalty on the director, who omits to disclose his interest in the contract and has enacted section 86 F in 1936 whereby it precludes a director from entering into any contract for the sale, purchase or supply of goods and materials with the company and by virtue of amendment in section 86 I, (1) (h) brings about an automatic vacation of the office of such a director. A closer scrutiny into section 91 A and section 86 F [read with S. 86. I (1) (h)] will reveal that on the one had, the disclosure of the nature of the interest in a contract or arrangement entered into by or on behalf of the company by a director who is directly or indirectly concerned or interested in such contract at the first meeting of the directors after the acquisition of his interest, would save such director from any penalty (and moreover a general notice, that the director is a director or a member of any specified company or a member of any specified firm and, is to be regarded as interested in any subsequent transaction with such firm or company, shall as regards any such transaction be sufficient disclosure within the meaning of this provision and after such general notice it shall not be necessary to give any special notice relating to any particular transaction with such firm or company) on the other hand, no such saving clause is contained in section 86 F. It means that under section 91A subsequent disclosure would save the director while section 86 F would require a prior consent of the directors and in this behalf the consent of all the directors must be at a meeting of the board of directors where the contract comes up for consideration and not merely the consent of directors individually when they are not sitting at a board meeting. The provision contained in section 86 F appears to be very stringent but as the legislature has thought it fit, in its wisdom, to enact such a provision it must be conformed to until it is amended. It is doubtful if the Articles of Association can contain a regulation providing for a prior consent of the directors in all cases where a director enters into any contract or arrangement with the company in which he is interested,

Stringent provisions against interested director.

In the register to be maintained for the purposes of section 91 A (3) it is not necessary to reproduce the contracts in extenso. A brief summary of the terms of the contract indicating the name of the party of the contract, the commodity or service or manufacture to which the contract relates, the rates thereof and the date as to delivery or performance, as the case may be, should suffice.

A form of the register of contract is appended below for reference.

Form

Register of Contract S. 91-A (3).

Register of Contracts in which the Directors are interested.

Serial No.	Date of Contract.	No. & Date of Board resolution authorising the Contract.	Subject matter of the Contract.	Parties to the Contract.	Brief outlines of the Contract with salient terms.	Names & Addresses of the signatories.	Interest of Director.	Remarks if any

7. The Register of Applications and Allotments of Shares.

Although the Act does not provide for keeping of such a register in any particular form but the maintenance of such a register is considered essential, as without it there is danger of evidence being lost of important matters, which may arise at any time during the lifetime of the company, especially in determining issues regarding validity or allotments to certain members. Before explaining the form in which this register is to be maintained it would be necessary to give the procedure that is to be adopted in making the allotment of shares and the issue of capital.

It has already been stated as to how shares are divided into different classes with varying rights with regard to voting, dividends, and distribution of assets. Having obtained the Certificate of Incorporation, the Directors of a Private Limited Company can immediately proceed to allotment of shares, and the cumbersome procedure laid down under Ss. 101 and 103 does not stand in their way.

They have not to see that the minimum or whole amount of the share capital as required by S. 101 has been subscribed. The directors can commence business immediately and exercise borrowing powers. The only care that is to be taken is to see that the applications of such members who are not subscribers to the Memorandum and Articles of Association are received in a proper form and their shares duly allotted, and then a return is sent under S. 104 of the Act, which is a formality of very great importance. We shall deal with these matters one by one.

Share applications. The application for shares is a basic document, constituting an offer by a person¹ to accept allotments of shares upto the limit applied for and to become a member of the Company. It is therefore necessary that it should be in a proper form and duly signed by the person or his authorised agent. We give below the form of Application which is usually adopted.

SHARE APPLICATION FORM

Date _____ 194 .

The Directors,

Dear Sir,

I/we request you to please allot me/us _____ ordinary shares of Rs. 10/- each of the company for which a sum of Rs. _____ by cheque/cash is being paid to you. I/we do hereby agree to bind myself/ourselves by the Memorandum and Articles of Association of the company as amended up-to date and shall be willing to take as many shares out of the number of shares applied for as the directors may in their discretion allot me/us.

Yours faithfully,

.....
Specimen signature.

Signature _____

Name _____

Designation _____

.....
Specimen signature.

Address _____

1. See section 101 (8) and section 103 (6).
2. Or his agent, *Barret's case*, 4 De G. J. and S. 416; *Harman's Empress and Co.*, (1896.) 2 Ch. 643; *Hindleys case*, (1896) 2 Ch. 121. Actual authority is not necessary: *Henry Bentley and Co.*, (1893) 69 L. T. 204. If application is made in a fictitious name, the real applicant's name may be entered in the Register: *Pugh and Sharman's case*, 13 Eq., 566.

Another Form**FORM OF APPLICATION FOR SHARES**

To The _____ Company Ltd., _____

Dear Sir,

I hereby apply for allotment of _____ shares of the above named company or such smaller number as the company may allot to me and I agree to accept the shares so allotted, subject to the provisions of Memorandum of Association and Articles of Association of the Company. I send herewith a sum of Rs. _____ by cheque/money-order/per bearer being the deposit of Rs. _____ per share, and I agree to pay the balance of the unpaid amount in respect of the shares allotted to me as and when such balance or part thereof may be called up and I authorize you to enter my name in the register of members in respect of the shares so allotted. I shall be bound by the Memorandum and Articles of Association of the Company, as the same may be amended from time to time, and shall be deemed to have received any communication if addressed at the undermentioned address or as may be hereafter notified by me to the company in writing.

Yours faithfully,

Signature _____

Name in full (in block letters)

Address _____

Dated _____

Madras, _____ day of _____ 194 . _____

Specimen signature for future reference _____

Receipt for amount paid on application (to be delivered to the applicant).

Received this _____ day of _____

From Mr. _____ the sum of Rs. _____

being a deposit of Rs. _____ per share payable

on application for _____ of Rs. _____

each in the above named company

Rs. _____

For the _____

_____ Co. Ltd.

Secretary.

Another Form**FORM OF APPLICATION FOR SHARES BY FIRM**

To The _____ Company
Limited _____

Gentlemen,

We hereby apply for allotment of _____ shares, or such smaller number as the company may be pleased to allot to us, subject to the provisions of the Memorandum and Articles of Association of the company. We send hereby the sum of Rs. _____ by cheque/money-order/per bearer being a deposit of Rs. _____ per share and we agree to pay the balance of unpaid amount in respect of the shares allotted to us as and when the sum or part thereof is called up and we authorize you to enter the name of the firm in the register of members in respect of the shares so allotted or enter the names of the partners of the firm in the order mentioned herein *viz.*, AB, CD, E.F. We append below the signatures of the partners for future reference.

Calcutta

Dated _____

Yours faithfully,

Partner _____

Firm's name _____

Address _____

Specimen signatures of the _____
partners of the firm named _____
applicant.

Partner No. 1. _____

Partner No. 2. _____

Partner No. 3. _____

The _____ Limited

Receipt for amount paid on application

(to be delivered to the applicant).

Received this _____ day of _____

19 _____ from Messrs. (firm name) _____

the sum of Rs. _____ being a deposit of Rs. _____

share payable on application for _____ shares of Rs. _____

each in the above named company

Rs. _____

For _____

Company Limited.

Secretary.

(It is not usual to allot shares to a firm. It is preferable to allot shares in the names of the partners of a firm jointly.)

It is always better to take the specimen signatures of the applicant at one or two places on the Application. These specimen signatures can later on be cut and pasted in the Register of Members and referred to conveniently at the time of transfer for verification of signatures. It should be carefully noted that

5 A payable with shares applied for is to be received with the Application. This is necessary because of the provisions of S. 101 (3).

Any allotment thus made without payment of at least 5 per cent of the nominal value of the shares with the application is therefore

invalid.¹ The amount payable on application must be paid in cash or by cheque but cheques that are subsequently dishonoured do not constitute payment, even though immediately replaced by other cheques.²

Payment by cheque
valid only after en-
cashment.

It is therefore necessary that the allotment should be made after the cheques have been encashed by the Company.

The application for the shares can also be oral,³ but it is always better to have a written application to avoid complications. As the application is only an offer to take shares it can at any time be withdrawn before acceptance is notified by a Letter of Allotment or otherwise, to the applicant.⁴ For the same reason the application is revoked by the death or insanity of the applicant, if the Company has notice to the effect before allotment. If a person makes an application in a fictitious name or in the name of a person incapable of contracting it will make that person liable to take the number of shares applied for, if his identity can be established.⁵

Application for share
orally or in writing.

Withdrawal.

Revocation by death.

Application in ficti-
tious name.

Allotment. The allotment of shares is the acceptance by the Company of the offer made by an applicant for shares by which the latter becomes the holder of the whole or a portion of unappropriated shares of the Company, applied for by him. Unless the Articles otherwise provide the duty of making allotment primarily falls upon the Directors⁶ and it cannot be delegated to purely Ministerial Officer. The Directors can however appoint a Committee⁷ from amongst themselves who can make the allotment from time to time, unless there is a provision to the contrary in the Articles of Association.⁸ Resolutions making allotments are usually written in the following form.

Allotment by Directors.

No delegation.

Except to a committee
it allowed by articles.

FORM OF RESOLUTION OF ALLOTMENT OF SHARES

Application of _____
for _____ shares.

Application of _____
for _____ shares was
considered. Resolved that _____
shares be allotted and the secretary be
directed to send to the applicant notice
of the said allotment forthwith.

1. *Mutual Bank of India Ltd., v. Sohan Singh*, A. I. R. 1936 Lah. 790; *Indian States Bank Ltd., v. Sardar Singh*, A. I. R. 1934 All. 855; *Ramlal Sao v. Malak*, I. L. R. 1941 N 567. But see *In re. Happy India Insurance Co., Ltd.*, I.L.R., (1939) 2 C 512.

2. See *Mears v. Western Calcutta Pulp Co.*, (1905) 2 Ch. 353, 360. *In re National Motor Mail Coach Co* (1903) 2 Ch. 228; cheque cashed by company after allotment.

3. *Levita's case*, (1867) 3 Ch. App. 36; *Gunn's case*, (1867) 3 Ch. App. 49. *Bloxam's case*, 33 Beav. 529.

4. *Ritso's case*, (1877) 4 Ch. D. 744; *Sarkar v. Parjoor Hosiery Mills*, 1933 R. 388 *London and Northern Bank*, (1900) 1 Ch. 220, or before letter of allotment is posted; *Household Fire Insurance Co. Ltd. v. Grant*, (1879) 4 Ex. D. 216; *Helthorn v Fraser* (1892) 2 Ch. 27, 33; *Branner v. Moore*, (1904) 1 Ch. 305, 316. withdrawal may be by word of mouth, *Truman's case*, (1894) 3 ch. 272. Withdrawal by post must be communicated before notice of allotment is posted, *gyrne v. Van Tienhover*, 5 C. P. D. 344.

5. *Pugh and Sharman's case* 13 Eq. 566; *Richard Sons' case*, 19 Eq. 588; *G. H. Levita's case*, L. R. 5 Ch. App. 488.

6. and must be made at a regular meeting of the Board of Directors: *Haycraft Gold Etc., Co.*, (1900) 2 Cl. 230. Irregular allotment may be ratified later on; *In re Portuguese Consolidated copper Mines Ex. Parte, Badmen*, (1890) 45 Ch. D. 16.

7. *Puarala v. Guntur etc., Mills*, 26 I. C. 349.

8. *Ex Parte Roberts*, (1852) 1 Drew 204.

Another Form

Applications of _____ Resolved that the following number of
 1. _____ shares be allotted to the person or per-
 2. _____ sons against whom the same are men-
 3. _____ tioned herein below :
 4. _____
 for allotment _____ shares from _____ to _____
 _____ shares from _____ to _____
 Shares respectively. _____ shares from _____ to _____
 _____ shares from _____ to _____

The Secretary is directed to send the mentioned persons forthwith.

The applications of _____ Considered the applications of the
 _____ persons mentioned below :—
 for allotment of _____ 1. _____
 _____ 2. _____
 shares respectively _____ 3. _____
 _____ 4. _____

In view of the full amount of application money not having been received in cash, the consideration of allotment to these applicants be postponed for a week.

Form of Resolution for Allotment of Shares by Circulation

Resolved that allotments of 10817 ordinary shares in the Capital of the Company of Rs. 10/- each from No. 11684 to 22500 as mentioned in the application and allotment sheets signed by the members of the sub-committee by circulation be and are hereby confirmed.

There should be no delay in allotting shares on receipt of application for shares, as there is an implied term in such an application that if the offer is to be accepted it must be done within a reasonable time of the making of the offer, otherwise the applicant for shares can repudiate the allotment.¹ Mere allotment is not sufficient. The fact is to be communicated to the applicant² or to his authorised agent.³ Although the communication of acceptance of the offer contained in the application by allotment is not necessary to be made in writing,⁴ it should invariably be made up a regular letter of allotment. Notice of allotment may be sent by post.⁵ The notice of allotment is otherwise known as allotment letter, which besides communicating the acceptance, requires the applicant to pay the amount becoming due on allotment of shares. If the intention is to make the shares fully paid and the whole amount is required immediately for the purpose of the business, then it is better to receive

1. See *Crawley's case*, L. R. 4 Ch. App. 322; *Ramsgate Victoria Hotel*, L. R. 1 Ex. cases, 109. *Indian Ccooperative Nangatra Co. v Padamsi Premji*, 1934 B 97; *Radhe Shyam Beopar Co Ltd. v. Prahbir Dayal Ram Dha*, 1936 L. 16.

2. *Pellyar's case*, L. R. 2 Ch. App. 527.

3. *Levita's case*, 5 Ch. Appl. 489; *De Rosar's case*, 21 L. T. 10

4. *Gunn's case*, L. R. 3 Ch. App. 40.

5. *Household Fire Insurance & etc. v. Grant* 4. Ex. D. 216. *Henthorn v. Fraser*, (1892) 2 Ch. 27. Contract is complete even though the notice proved to be sent by post is not actually received. *Harri's case*, 7 Ch. A. 587.

half the amount of the nominal value of the shares with the application and the remaining half on allotment. This will save time taken in correspondence and in undergoing other formalities. A form of the Allotment Letter which can be changed to suit conditions is given below :—

No. _____

Allotment Letter

_____ ordinary and _____ deferred shares have been allotted to _____

Dated _____

Secretary.

Another Form

No. _____

Letter of Allotment of Shares

Dear Sir/Madam,

Pursuant to your application for _____ shares in the above-named company, I am instructed to inform you that _____ shares of the value of _____ each have been allotted to you.

Application money of Rs. _____ being Rs. _____ per share having been received already, you are now requested to remit us Rs. _____ being the amount falling due on allotment within one month of the receipt of this letter, when the share certificate will be issued to you.

Please, retain this allotment letter to be exchanged for your share certificate.

Yours faithfully,
Secretary.

Date _____

Another Form FORM OF ALLOTMENT LETTER

The _____ Company, Limited

No. _____

Dated _____

To _____ Esq.

Dear Sir,

You are hereby informed that pursuant to your application dated _____ for allotment of _____ shares of the company to you, the directors of the company have been pleased to allot to you _____ shares of Rs. _____ each and you are requested to remit the sum of Rs. _____ on or before

_____ being the amount of Rs. _____ per share payable on allotment of the said shares. The balance will be payable as and when called by the directors.

This letter of allotment and the receipt are to be exchanged for the share-certificate, which will be ready shortly.

Yours faithfully,
Secretary

The _____ Company Limited.

Letter accompanying the remittance of allotment money.

To _____ company Limited.

I beg to send you herein the sum of Rs. _____ being the amount payable on allotment of _____ shares in the _____ Company Limited as required.

Yours faithfully

Address _____ Allottee.

Receipt of allotment money:

The _____ Company Limited

Received from _____ Esqr.,

the sum of Rs. _____ being the amount payable on allotment of _____ shares _____ of the above mentioned company, viz., No. _____ to No. _____ (both inclusive)

Rs. _____

Secretary

For _____ Co. Ltd.,

Another Form

LETTER OF ALLOTMENT OF FULLY PAID UP SHARES

The _____ Company Limited

To _____

Dated _____

Dear Sir,

In accordance with the agreement dated _____ made between yourself and the above named company the directors have by a resolution passed on _____ day of _____ been pleased to allot to you _____ fully paid up shares of the company No. _____ to No. _____ (both inclusive).

This letter of allotment is to be exchanged for the share certificate which will be ready shortly.

Yours Faithfully,

Secretary,

For the _____ Co., Ltd.

It should be noted that the Letter of Allotment is required to be stamped with -/2/- stamp. Like a share certificate the allotment letter is a valuable document creating rights. It confers on a person the right to receive a certain number of shares in the capital of the company. It is very often pledged with the bankers to get advances on the understanding that when the share certificate is issued, it shall be substituted. It is for this reason that some companies invariably demand the return of the allotment letter before the share certificate is issued. Some companies also demand back the receipt of the share application money, the correctness of which procedure cannot be logically explained. Even with regard to the return of the allotment letter there appears to be no provision of law which makes it obligatory for a company to demand its return before issuing a share certificate. Therefore the bank that retains the allotment letter certainly runs a risk. It is better that the condition of the return of the allotment letter should not be mentioned, in the notice, because in that case if the company then issues a share certificate without demanding the return of the allotment letter the bank can come forward and say that it had been misled by this condition into giving the advance. Very often the allotment letters are lost by the applicants and it results in inordinate delay and correspondence to get letters of indemnity executed before issuing certificates.

The issue of an allotment letter alone does not make a person member of the company. Something further is required and that is that his name should be entered in the register of members (S. 30). This condition however is not required in the case of subscribers to the Memorandum of Association.¹ They become members of the company automatically,² when the company is registered. But once valid allotment is made and duly communicated to the applicant, the Directors have no power to release the shareholder by canceling his allotment.³

After the allotment letters are issued the application should be entered in the application and allotment register in the following form :

1. Number of application.....
2. Date of application...
3. Name, address and occupation of the applicant...
4. Number of shares applied for...
5. Amount of deposit...
6. Date and number of resolution of allotment...
7. Number of shares allotted.....serial No.....to No.....
(both inclusive .
8. Number of allotment letter.....

¹ Nicol's case, 29 Ch. D. 447; *Alexander v. automatic Telephon Co.*, (1903) 2 Ch. 63. See *Evan's case*, (1867) L. R. 2 Ch App. 430.

² See *London and Provincial Co.*, 5 Ch. D. 525; *Dalton Time Luck Co. v. Dalton*, (1892) 66 L. T. 704. A subscriber has to pay for his shares in cash: *Kanduri Lakshmiiah Chetry v. Adoni Electric Supply Co Ltd.* A. I. R. 1944 in 322

³ *Fletcher's case*, 37 L. G. Ch. 49; *In re London etc., or coal Co.* 5 Ch. D. 525; *Doff Executors' case*, 32 Ch D. 301; *Adam's case* L. R. 13 Eq 474.

9. Date of issue of allotment letter.....
10. Amount of allotment money to be paid.
11. Date of receipt of allotment money and the amount thereof.
12. Balance of amount unpaid on the shares allotted.....
13. Folio in register of members.....
14. Date of entry in the register of members.....
15. Number of shares certificate and date of issue.....
16. Date of despatch of certificate . . .
17. Dates of call.....amount called.....
18. Date of receipt of call money.....and the amount received.
 - 1.....
 - 2.....
 - 3.....
 - 4.....
19. Date of transfer of shares.....
20. Name of transferee.....
21. Resolution sanctioning the transfer.....
22. Remarks. . . .

B. Account Books of the Company and Statements.

The duties of the manager or the secretary of the registered office do not end with the maintenance of the aforementioned registers. His further duty is to see that proper books of accounts are maintained as required by section 130 of the Indian Companies Act, the provisions of which should be carefully noted.

S. 130 (1) Every company shall cause to be kept proper books of accounts
Books to be kept by with respect to :—
company and
penalty for not keep
ing proper books.

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place ;

(b) all sales and purchases of goods by the company ;

(c) the assets and liabilities of the company.

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall be opened to inspection by the directors during business hours.

(3) Where a company has a branch office, the company shall be deemed to have complied with the provisions of sub-section (1) and sub-section (2) if proper books of account relating to the transactions effected at the branch office are kept at the branch office and proper summarised returns, made up-to-dates at intervals of not more than two months, are sent by the branch office to the registered office of the company or other place referred to in sub-section (2).

(4) In the case of a company managed by a managing agent the managing agent, or where the managing agent is a firm or company, the partner or director of such firm or company and in any other case the director or directors who have knowingly by their act or omission been the cause of any default by the company in complying with the requirements of this section, shall in respect of such offence be liable to a fine not exceeding one thousand rupees.

A perusal of the above section will show that the law requires accurate record of all sums of money received and expended by the company, together with sufficient details to form an idea of the matters in respect of which the receipts and expenditure took place. Although sub-section (1) of the above section simply relates to subjects and matters with regard to which proper accounts have to be maintained, yet in effect implies the adoption of a modern system of account keeping. It would therefore be necessary to make a brief survey of the books that will be required to be kept in order to comply with this provision of law.

Double Entry System.—Quite a number of books are available in the market from which the modern method of book keeping can be studied and adopted. It has been found by experience that double entry system is more suited to the present day elaborate and detailed accounts maintained by big business concerns. The system is by no means a new one. Its origin dates back to the 14th century when it was adopted by the old merchants of Italy, Spain, and Holland. The system has been found suitable because of the handy controls that it provides in detecting mistakes. Every transaction has a two-fold aspect and is therefore recorded as such twice. Its one aspect is a debit to an account and the other that of credit to another account; e.g. the goods purchased for sale are debited to the purchases Account and credited to the party from whom the goods have been received. Again goods sold to a customer are debited to the customer's account and credited to sales account. Afterwards when payment is made to a supplier for goods received, then the cash account or the cash is credited and the supplier's account is debited. Similarly when money is realised from a customer cash is debited and the customer is credited.

It will be thus seen that this system keeps the credit and debit entries always at a level and there are very few chances of mistakes occurring. The following books of accounts have to be maintained in this system.

(i) Books of account.

Journal. This is the principal book in the double entry system from which entries both for credit and debit are taken to the various accounts. In old days every transaction used to be passed through the journal, but now-a-days because of the large number of transactions it is not possible to do so with the result that we now classify our business transaction into separate journals or books of first entry. Thus we have separate Journal books to record cash purchases, sales etc., suited to the nature and size of each business. These books are sometimes further divided to record cash and credit sales according to the volume of each business. Divisions and classifications can best be adopted by close observation and according to the requirements of each trade.

Ledger. From the Journal books or Day books the entries are carried into the Ledger. These are also kept in varying forms according to the individual requirements. One ledger for an expending business some times proves to be too voluminous to handle. If entries are properly passed in the ledger to the debit and credit of the relative accounts, the total debits will exactly equal the total credits. This is tested by preparing the Trial Balances from time to time. These account books are also available in a ruled form and if variations have to be made to suit particular requirements, these can be ordered with the modifications required. Trial balances. It is suggested that ledgers should always be kept in a loose leaf form in binders of proper size.

Stocks. It is not only the the account of the cash transactions that is to be maintained, but the law also requires that a proper record or account of the goods should also be maintained as they form the best part of the assets of the company.

It should be borne in mind that no matter how carefully the accounts regarding sales and purchases have been maintained, the final results will be disappointing if the stocks of materials and finished goods are not kept accurately. In fact the real efficiency of the businessman lies in his keeping the stocks in a good condition and without permitting serious leakages. The methods of stock maintenance are mostly known to every businessman and it would not be necessary to suggest any elaborate system. Suffice it to say that all goods received should be entered in the stock book and in the same manner all goods leaving the stores should be passed through the stock book. As to how this result is to be achieved depends upon the volume and nature of each business. When the items are numerous the maintenance of stock books is strongly recommended in visible loose leaf binders, which saves lot of time and avoids confusion. Loose leaf equipment being a specialised branch, it is best to obtain expert advice in the matter of forms and binders.

Other Assets. Besides stocks the company has to keep an accurate account of its furniture, non-consumable stationery, machinery and other movable property. Specially ruled registers are also available for this purpose and all receipts and issues should be properly recorded and up-to-date account of property of the company maintained. Any item lost or destroyed during the course of the year should be promptly written off. It should be seen that the totals of furniture and stationery registers tally with the respective accounts in the ledger. Similarly the account should be maintained of the immovable property of the company and all purchase vouchers and documents in respect of the running assets of the company should be maintained and preserved carefully. These documents and vouchers are many a time required by the Income-tax authorities for inspection. Section 131 of the Act deals with the preparation of annual balance-sheet and profit and loss account of the company, and lays down that every company shall once atleast in every year and at intervals of not more than 15 months cause the accounts to be balanced and a balance-sheet to be prepared. Penalty has been provided for making default in this respect. The directors of a company who do not

Furniture, immovable property and other assets.

(ii) **Balance-sheet.**

Balance-sheet to be prepared.

take the trouble to know their position even at the close of a year must be considered as leading towards disaster, and the object of making mandatory provisions in this respect, is in pursuance of the policy of the authorities to see that business is transacted on proper lines. A form has been appended to the Indian Companies Act, according to which the balance-sheet and profit and loss account is to be drawn. Sub-sections (1) and (2) of section 131 are reproduced below for ready reference of the readers. Sub-section (3) regarding sending a copy of the audited balance-sheet and profit and loss account to every member of the company and depositing the same at the registered office of the company for inspection does not apply to private limited companies.

S. 131. (1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a balance-sheet and profit and loss account in the case of a company or not trading for profit an income and expenditure account for the period, in the case of the first account since the incorporation of the company and in any other case since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months or in the case of a company carrying on business or having interests outside British India by more than twelve months :

Provided that the registrar may for any special reason extend the period by a period not exceeding three months.

(2) The balance-sheet and the profit and loss account or income and expenditure account shall be audited by the auditor of the company as hereinafter provided and the auditor's report shall be attached thereto, or there shall be inserted at the foot thereof a reference to the report, and the report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

(3) Every company other than a private company shall send a copy of such balance-sheet and profit and loss account or income and expenditure account so audited together with a copy of the auditors' report to the registered address of every member of the company at least fourteen days before the meeting at which it is to be laid before the members of the company, and shall deposit a copy at the registered office of the company for the inspection of the members of the company during a period of at least fourteen days before that meeting.

It should be noted that although it is not necessary in the case of private limited companies to send a copy of the Balance-Sheet to shareholders, but any shareholder can demand inspection and also have a copy of the same. (S. 135). Ss. 132 & 132A lay down as to what are to be the essential contents of a balance-sheet. As the balance-sheet is a document of great importance which reveals the stability or otherwise of a company and is carefully examined by the shareholders and bankers to ascertain the position and soundness of the concern, it should be carefully prepared and the law in respect thereof should be given best attention. The directors of a company have a special responsibility to discharge their obligation of seeing that the profits are correctly arrived at and no part of dividends is paid out of capital. S. 132 states :—

S. 132. (1) The balance-sheet shall contain a summary of the property and assets and of the capital and liabilities of the company giving such particulars as will disclose the general nature of those liabilities and assets and how the value of the fixed assets has been arrived at.

(2) The balance-sheet shall be in the form marked F in the Third Schedule or as near thereto as circumstances admit.

(3) The profit and loss account shall include particulars showing the total of the amount paid whether as fees, percentages or otherwise to the managing agent, if any, and the directors respectively as remuneration for their services and, where a special resolution passed by the members of the company so requires, to the manager, and the total of the amount written off for depreciation. If any director of the company is by virtue of the nomination, whether direct or indirect of the company, a director of any other company, any remuneration or other emoluments received by him for his own use, whether as a director of, or otherwise in connection with the management of, that other company, shall be shown in a note at the foot of the account or in a statement attached thereof.

Sub-section (3) of this section was added by the Amending Act 1936. The object was to give more and better information to the shareholders, and especially with regard to the payments made to the managing agents and Directors. It was felt that the cut and dry balance-sheets generally prepared by the officers of the company did not give enough information to the shareholders and large sums of money were camouflaged under innocuous headings like, commissions paid, establishment, travelling, advertisement, etc. The section now requires that all such payments made to the managing agents and directors shall be shown separately in the balance sheet. It very often happens that a person although neither on the Directorate nor a partner of the managing agents in fact controls the company by holding shares either in his own name or in that of his own relations and friends and simply styles himself as a Manager. In that event it is for the shareholders of that company to pass a special resolution that all the payments to such person should be shown separately in the balance-sheet. It is suggested that the

Payments to manager controlling the company.

provision of law in this respect is not satisfactory, because such a person would never allow a special resolution to be passed for it is his intention not to bring to light the payments he receives from the company. The object of the amended law is therefore very easily defeated.

It has also been provided, that if a director of a company is nominated the director of any other company by virtue of his being the nominee of the company, then all remunerations received by him from that other company are to be stated in the form of a note at the foot of the balance-sheet. This is against to prevent the directors of a company to mis-use their position, and derive undue advantages from other companies where they hold the position of a trustee on behalf of the company.

If a company keeps proper books of accounts, the preparation of a balance-sheet as required by law does not present any difficulty. It is simply the grouping together of assets and liabilities of the company under various heads. The liabilities are put on the left hand side and the assets are stated on the right hand side. It is interesting to note that the capital of the company, the reserve funds and the profits made by the company during the year, as well as amounts carried forward in the profit & loss Account are put on the side of liabilities. This would be easily understood if it is borne in mind that the company has to account for these amounts, and hence they are a liability which is counterbalanced by the assets appearing on the right hand side. It is difficult in this short treatise to give in detail as to how the entries are carried to the balance-sheet from the various accounts in the ledger; but we are giving hereafter below a copy of the form of balance-sheet prescribed which will indicate the requirements of the Annual Balance Sheet :—

(See Appendix for Balance Sheet)

The balance-sheet need not be, and in fact must not be, a mere inventory. It is supposed to be a pictorial representation of the trading position of the company, easily appreciated not by ignorant people but by persons who are reasonably able to understand commercial expressions and commercial conditions.¹ All debts appearing in the current books of the company must be shown under the head of 'Book Debts'. A debt is nonetheless a debt though there may be little prospect of its recovery and the company may have means to recover the deficit; if it is not paid. The best course in such case is to declare the amounts that are entirely irrecoverable as Bad Debts; and that being done, such debts would cease to be 'Book Debts'. Therefore all genuine Book Debts must be covered by the entry against this item whether they are considered good, doubtful or Bad Debts and the clear provisions of Form 'F' cannot be whittled done by general considerations as to the object of a balance-sheet.²

Reserves. On the liabilities side after the recital of the capital in the usual form comes the heading of 'Reserves'. Reserves can be of several kinds.

1. *Superintendent etc. Bengal v. Akhil Bandu*, A. I. R. 1936 Cal. 680, 683

Note. In *Stringer's case*, L. R. 4 Ch., App 475, the company was engaged in hazardous trade namely for running a blockade during the Civil War in America. The balance-sheet and profit-and-loss account were made out and dividend paid on the basis of the profits disclosed thereby. It was held that the balance-sheet was not to be regarded as delusive and fraudulent merely because the estimated value was put upon the assets, which were then in jeopardy and were subsequently lost profits.

2. *Shamdasani v. Pochkanwalli*, A. I. R. 1927 Bom. 414.

Queen. Emp. v. Moss, 16 All. 88. As to history of Form 'F' balance sheet, see Venkoba Rao's *Indian Companies Act 1946 Ed.*, at pp. 395.

The most common is the General Reserve, which represents the savings of a company out of its profits of a year and is utilized for general business. The second type of Reserve is the fixed Reserve or Reserve Fund which is created to meet future liabilities ; for instance, Funds required for renewing the lease or for redemption of the debentures. Such Reserves are set apart and invested outside the business of the company, in order to be easily available at the time of requirement, without in any way affecting the funds of the company at that time, when the contingency arises. There is yet another class of Reserve which is called a Secret Reserve. This is represented in the form of appreciation of lands, buildings, machinery and other fixed assets of the company as well as the goodwill of the company.

These are not shown in the balance-sheet, as such, but they can be ascertained by vigilant persons. Very often depreciation is also carried on to the left hand side in the column of reserves and the Fixed Assets are shown at their purchase value. In case where the value of Fixed Assets are shown after deduction of depreciation, the depreciation also becomes a hidden reserve as in the case of Form given above.

Profit and Loss. This is one of the most important items on the liability side, if the figure is a profit and on the side of assets if it is a loss. It is carried from the Profit-and-Loss Account and is required to be attached to the balance-sheet under S. 131 of the Indian Companies Act.

In the Profit-and-Loss Account the item relating to taxes represents the actual amount of Income-tax and Surcharge etc., paid for the previous year. It very often happens that the Income-tax of a Company is not determined for a long time and therefore the Auditors rightly insist that a separate provision for taxation should be made and the actual figures should not find place in the Profit-and-Loss account. In that case a reserve for taxation is created under the allocation of the provisions of the previous year and after deducting any amount paid during previous year the balance is carried forward adding further reserves at the time of allocation of the profits by the Directors in their Report. This is usually a matter of convenient adjusting and the main question for consideration comes to with regard to distribution of Dividends out of the profits of the year and in certain cases out of the reserves or profits made from the sale of properties, the value of which may have appreciated.

Although the appreciation of balance-sheet and profit-and-loss Account is generally left to the auditor of the company, yet its different aspects must be clearly understood, because it is the principal officer of the company, who has to advise the Directors regarding the Company's true financial position and the funds available for the distribution of dividends. Again the responsibility of the auditor only extends to the figures available in the books of the company and as regards actual stocks etc., the responsibility rests on the shoulders of the directors and the principal officer, who certifies as correct the valuation of stocks to the auditor. S. 133 of the Act clearly places the responsibility for the authentication of the balance-sheet on the directors or the managing agents, as the case may be. The said section is reproduced below and it will be observed that the failure to sign the Balance Sheet properly is visited by a penalty.

S. 133. (1) Save as provided by sub-section (2) the balance sheet and profit and loss account or income and expenditure account shall,

(i) in the case of a banking company, be signed by the manager or managing agent (if any) and, where there are more than three directors of the company, by at least three of those directors. and where there are not more than three directors, by all the directors.

(ii) in the case of any other company, be signed by two directors, or when there are less than two directors, by the sole directors and by the manager or managing agent (if any) of the company.

(2) When the total number of directors of the company for the time being in British India is less than the number of directors whose signatures are required by sub-section (1), then the balance-sheet and profit and loss account or income and expenditure account shall be signed by all the directors, for the time being in British India, or if there is only one director, for the time being in British India, by such director, but in such a case there shall be subjoined to the balance-sheet and profit and loss account or income and expenditure account a statement signed by such directors or director explaining, the reason for non-compliance with the provisions of sub-section (1).

(3) If any default is made in laying before the company or in issuing a balance-sheet and profit and loss account or income and expenditure account as required by section 131 or if any balance-sheet and profit and loss account or income and expenditure account is issued, circulated or published which does not comply with the requirements laid down by and under S. 131, S. 132 & S. 132A and this section, the company and every officer of the company who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to five hundred rupees.

Persons who were never directors or officers of the company when the default occurred in preparing the balance-sheet and placing before the general meeting, cannot be held liable in respect of offences in not complying with the provision of law.¹

Before closing the subject of preparation of balance-sheet, the provisions of S. 132A which deals with inclusion of particulars as to subsidiary companies should be noted. S. 132 A is reproduced below:—

S. 132 A (1) Where a company, in this Act referred to as the holding company, holds shares, either directly or through a nominee, in a subsidiary company or in two or more subsidiary companies there shall be annexed to the balance-sheet of the holding company the last audited balance-sheet, profit and loss account and auditors' report of the subsidiary company or companies and a statement signed by the persons by whom, in pursuance of section 133, the balance-sheet of the holding company is signed stating how the profits and losses of the subsidiary company or where there are two or more subsidiary companies the aggregate profits and losses of those companies, have been dealt with in or for the purposes of the accounts of the holding company, and in particular how and to what extent—

(a) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company or of both, and

(b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the company as disclosed in its accounts.

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company or the actual amount of any part of any such profits and losses which has been dealt with in any particular manner :

Provided further that for the purposes of this section an investment company, that is to say, a company whose principal business is the acquisition and holding of shares, stocks, debentures, or other securities shall not be deemed to be a holding company by reasons only that part of its assets consists in 51 percent or more of the shares of another company.

1. In re : Narasimha Rao A. I. R. 1937 M. 341.

(2) If, in the case of a subsidiary company, the auditor's report on the balance-sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the correct view of the state of the company's affairs according to the best of their information (and the explanations given to them and as shown by the books of the company, the statement which is to be annexed as aforesaid to the balance-sheet of the holding company, shall contain particulars of the manner in which the report is qualified.

(3) For the purposes of this section the profits and losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate, or if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

(4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement aforesaid, the directors who sign the balance-sheet shall so report in writing and and their report shall be annexed to the balance-sheet in lieu of the statement.

(5) The holding company may by a resolution authorise representatives named in the resolution to inspect the books of account kept in accordance with S. 130 by any subsidiary company, and on such resolution being passed those books of account shall be open to inspection by those representatives at any time during business hours.

(6) The rights conferred by S. 138 upon members of a company may be exercised in respect of any subsidiary company by members of the holding company as if they were members of that subsidiary company.

For definition of a subsidiary company a reference should be made to sub-section (2) of S. 2, which runs as follows:—

Where the assets of a company consists in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not, and

Subsidiary company.

(a) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty percent of the issue share capital of that other company or such as to entitled the company to more than fifty percent of the voting power in that other company, or

(b) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

that other company shall be deemed to be a subsidiary company within the meaning of this Act; and the expression 'subsidiary company' in this Act, means a company in the case of which the conditions of this sub-section are satisfied and includes a subsidiary company of such company:

Provided that where a company the ordinary business of which includes the lending of money holds shares in another company as security only, no account shall, for the purpose of determining under this section whether that other company is a subsidiary company be taken of the shares so held,

Under the provisions introduced by the Amending Act of 1936 distinction has been made between a private company and a private company which is subsidiary of a public company. Whereas ordinarily a private company enjoys certain privileges, a private company, which is subsidiary of a public company

does not do so. For this reference may be made to S. 17 (2) proviso ; S. 84 (2), S. 86D (3), S. 86H, S. 87A (5), S. 87C (4), S. 87D (4), S. 91B (3) Proviso ; S. 91D (1) and S. 144 (1) and (5) (iii).

Directors Report.

After a balance-sheet has been prepared, duly signed by the auditors and directors of the company, then the directors report is to be prepared for being placed before the shareholders in the annual general meeting. It is not at all necessary to make this report elaborate and lengthy and it is always better to confine the report to the necessary requirements. There was no provision in the Act prior to the Amendment of 1936, but now new S. 131A has been added which mentions in brief as to what is to be contained in the directors report. This section is reproduced below :—

S: (1) The directors shall make out and attach to every balance-sheet a report with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to the reserve fund, general reserve or Reserve Account shown specifically on the balance-sheet.

(2) The report referred to in sub-section (1) may be signed by the chairman of the directors on behalf of the directors if authorised in that behalf by the directors.

(3) The provision of sub-section (3) of section 130 shall apply to any person being a director who is knowingly and wilfully guilty of a fault in complying with this section.

Although it is stated that the report is to be made by the directors as such but it is in fact the duty of the secretary or the managing director to prepare this report and have it approved and signed by the directors. It is also better to have a resolution passed in the Board that the Chairman is authorised to sign the report on behalf of the Directors because otherwise the signatures of one director or the other are likely to be missed for various reasons. Here again the failure to comply with the provisions is visited by penalties. The necessary feature of the directors' report is the allocation of profits of the company to various reserves. We give below a short and cryptic directors report for adoption with necessary variations :

Directors report of.....
for the year ending.....

1. The Directors have great pleasure in submitting herewith the Audited balance-sheet and profit and loss account for the year ending 31st December, 19 , showing a net profit of Rs....., to which has been added a sum of Rs.being the amount brought forward from the last year's profit and loss account making the total to Rs.....

2. The directors recommend the allocation of the above amount in the following manner :—

(i) Due to be paid as accumulated dividend at 6 per cent. p. a. free of income-tax to the preference shareholders Rs.

(ii) Due to be paid to the Ordinary shareholders at the above rate ... Rs.

(iii) A further bonus of.....per cent. and.....per cent. free of income-tax to be divided among the ordinary and preference shareholders respectively as per clause.....of Articles of Association ... Rs.

(iv) To be carried to General Reserve ... Rs.

(v) Reserves for taxation	... Rs.
(vi) Balance to be carried forward	... Rs.

Total

3. Messers.....Directors of the company retire by rotation and being eligible offer themselves for re-election.

4. That Messers.....& Co, auditors of the company retire and are eligible for reappointment.

Sd. Chairman

For & on behalf of the Directors.

Para 3 is to be inserted only if the Directors are due to retire according to the articles of association, but if they are permanent directors then this will not appear. Similarly variation in para No. 2 can be made if there are other class of shares and according to their rights of participation in profit as stated in the articles of association.

C. - MEETINGS

Ordinary General Meeting.

With the directors report and Balance Sheet ready, notice can now be sent for the ordinary annual general meeting to the shareholders. S. 76 provides that the General Meeting of the Company shall be held within 18 months from the date of its incorporation and thereafter once atleast in every calender year and not more than 15 months after the holding of the last preceding General Meeting. The holding of such a meeting is very essential and if default is made the directors and officers responsible for the wilful neglect are liable to be fined. Compliance can be enforced by any shareholder through the Court. Regulation 46 of Table A of the Indian Companies Act makes provision for the holding of such Meetings and their adjournments etc., and this is usually adopted in all the Articles. It runs as under :—

“ A general meeting shall be held within eighteen months from the date of its incorporation and thereafter once at least in every year at such time not being more than fifteen months after the holding of the last preceding general meeting and place as may be prescribed by the company in general meeting, or in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting, being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner as nearly as possible as that in which meetings are to be called by the directors.”

The period of notice required by Act for ordinary and extra-ordinary general meetings has been given under the tables separately which may be carefully studied. However, the form of notice for annual general meeting is given below for ready reference.

Notice of Ordinary General Meeting.

.....Co. Ltd.

.....

Dated.....

Notice is hereby given that the ordinary general meeting of the members of the above Company will be held on..... day of..... 19....., at Registered office of the Company, at..... o, clock in the..... noon for the following purposes :—

1. To receive and consider the directors' report and the audited balance sheet and the profit and loss account for the year ending with.....
2. To sanction the declaration of a dividend.
3. To elect directors in place of Mr....., Mr....., Directors retiring by rotation, to appoint auditors for the year ending.....
4. To transact any other ordinary business of the company.

By Order of the Board.

Secretary.

To,

.....

.....

.....

N. B.—The transfer books of the company will be closed from..... day of 19..... to..... day of..... 19..... (both inclusive).

Proceedings of the Meeting. Usually difficulty is felt in recording the proceedings of the general meeting and very often the directors and the chairman of the meeting are not aware of certain rules and regulations which should guide the conduct of such meetings. It is therefore considered necessary to give them in some detail here. Many points are not stated in the Company's Act but are taken from general practice in such matters. Before the actual date of the general meeting an agenda sheet should be drawn which can be conveniently filled up by the chairman of the meeting in his own hand. The form of the agenda sheet is given below which would be generally found useful.

Agenda Sheet

Agenda paper of the 11th ordinary annual general meeting of the..... company limited to be held on..... 194 , at 9 A. M. at the registered office of the company at..... Calcutta.

— — —

- Present.
1.
2.
3.
4.

.....Voted to the chair.

1. Read notice convening the meeting.
2. Submit balance-sheet with director's and auditor's report for the year 1946.
3. Move resolution sanctioning declaration of dividends and bonus.
1. The notice having been circulated was taken as read.
2. Moved by..... that the balance-sheet, director's and Auditor's report for the year 1946 be adopted.
Seconded by..... carried unanimously/by majority.
3. Moved by..... that the dividends and bonus as recommended by the directors be sanctioned.
Seconded by..... carried unanimously/by majority.

4. Propose that Mr..... be re-elected director.

5. Move resolution for reappointing M/s auditors for..... at Rs.....per annum.

6. Move resolution fixing the date, place and time of the next ordinary general meeting.

4. Moved by..... that Mr. be re-elected Director of the company.

Seconded by..... carried unanimously/ by majority.

5. Moved by..... that M/s. be appointed auditors after the year 1949 at Rs.

Seconded by.....

6. Moved by..... that the next ordinary annual general meeting of the company be held on atat the registered office of the company, at.....Calcutta.

Seconded by..... carried unanimously/by majority.

Lahore.

Chairman.

Dated.....

If resolutions are recorded in the form given in the above agenda sheet, it will be saving of time and proceedings in detail shall not have to be recorded; but only the names of the proposers and seconders of the resolution shall have to be given and the results entered accordingly. After the meeting has been held the agenda sheet should be signed by the chairman. It should not be understood that with this the record of the resolutions passed by the general meeting is completed. It will have to be recorded in the proceedings book maintained for the purpose as provided by S. 83. It should be noted that S. 83 requires minutes of all the proceedings of the general meeting, to be entered in a book kept for that purpose, and as such it would not be sufficient to paste the agenda sheet signed by the chairman on the pages of the proceedings book. The minutes must be written with hand and then got signed by the chairman. He may be the same person who presided over that meeting or the next succeeding meeting. It is therefore always safe to get the agenda sheet signed by the chairman and if the proceedings book has to be signed by the next chairman it would not matter much, as he can then refer to the agenda sheet which has been duly signed. Difficulty is sometimes felt as to the method of recording minutes of the general meeting. Although if the agenda sheet given above is reproduced verbatim, it would be quite in order; but we are giving below a form in which the proceedings are usually recorded.

Form of Minutes of the proceedings of the General Meeting

Proceedings of theAnnual General Meeting of the..... held on194 , at a. m./ p. m. at.....the registered office of the company.

Present. 1.
2.
3.
4.

Mr..... as voted to the chair.

1. Notice convening the meeting having been circulated was taken as read.

2. The directors report, and the balance-sheet & profit and loss account together with auditor's report having been circulated were also taken as read.

Moved by Mr.....and seconded by Mr.....; it was unanimously resolved that the balance sheet, and the director's and Auditor's reports for the year ending with.....194 , be approved and adopted.

3. Moved by Mr.....and seconded by Mr.....; it was unanimously resolved that the dividends and bonus as recommended by the Directors in their report be sanctioned for payment to the shareholders.

4. Moved by Mr.....seconded by Mr.....It was unanimously resolved that Mr.....be re-elected director of the company.

5. Moved by Mr....., seconded by Mr..... ; it was unanimously passed that Messrs.....be appointed auditors for the the year 1947 at Rs.....per annum.

6. Moved by Mr.....seconded by Mr.....; it was unanimously resolved that the next annual general meeting of the company be held on.....194 , at.....a. m/ p. m. at the registered office of the company.

Chairman.

Proceedings of the Meeting

Regulations No. 49 and 69 of Table 'A' deal with the procedure to be adopted at the general meetings and the manner in which poll is demanded and proxies are received and recorded. On the due date and time fixed for the general Meeting, a register of attendance of members should be kept ready, with two columns drawn on its page for giving the name of the member and the signatures opposite that. At the top of the page the following words should be written:—

The attendance sheet of 4th annual general meeting of "XYZ Company Ltd. , held on Thursday the 30th of May, 194—at 10 A. M
Attendance register. at the registered office of the company at.....Calcutta."

Serial No.	Name of the shareholder attending the meeting.	Signatures.

As the members come for attending the meeting there names should be written legibly and their signatures should be obtained on this register. Very often the articles provide as to who is to be the chairman of the general meeting. If so provided, then the person stated should be asked to occupy the chair if present. otherwise the chairman of the meeting should be elected.

Duties of a Chairman. As soon as the chairman occupies the chair he should see whether the necessary quorum required for the meeting is present. It should be noted that in the absence of any provision to the contrary in the articles of association of the company, a quorum of 2 members present in person is necessary. [See. S. 79(2) (B)].

Presence of quorum.

If the necessary quorum is there, then he should ask the secretary of the company to place before him the proxies received from the members for the general meeting. These proxies should be duly recorded in a register in a serial order in which they are received and initialled by the secretary, before the meeting is held. The ruling of the register is given below for convenience.

Ruling of the Register.

Serial No.	Date of Receipt.	Time of Receipt.	Name of Shareholder.	Proxy in favour of.	Number of votable shares held.	Remarks.

When a Poll is demanded at a meeting a member may vote either personally or by proxy. A proxy is a written instrument whereby a member authorises another member¹ to vote at a Meeting for and in place of the appointer. This instrument appointing a proxy must be in writing in the hand of the appointer or of his attorney duly authorised in writing, or if the appointer is a corporation either under the common seal or under the hand of an officer or attorney so authorised.² It is invariably provided by the articles of association that no person shall act as a proxy unless he a member of the company, the only exception made being in case of a limited company being a member. If an article provides that every vote not disallowed at the meeting shall be valid, it will validate a vote, not objected to at the meeting, given by a proxy, who is not a member.³ There is no common law right on the part of a shareholder of a company to vote by proxy.⁴ It is therefore, necessary to provide in the Articles for voting by proxy. In fact S. 17 of the Indian Companies Act specifically provides that Regulation 66 of Table A shall be deemed to have been incorporated in the articles of association of every company. This Regulation provides,

Reg. 66. The instrument appointing a proxy and the power attorney or other authority (if any), under which it is signed or a notarially certified copy of that

power or authority, shall be deposited at the registered office of the company not less than 72 hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

It is thus clear that the Legislature intended that the articles of association of every company should provide for voting by proxy and incorporate the above mentioned Regulation No. 66 as one of the Regulations relating to the deposit of proxy at the registered office of the company in the manner provided therein. As the Articles provide for voting by proxy therefore the rights of a member must be determined, in this behalf, according to the language in the proxy.⁵ an instructive case on this subject matter is *In re. Tatalron & Steel Co. Ltd.*⁶ The Articles of Association of a company usually provide a form for

(1) S. 79 (2) (g).

(2) S. 79 (2) (f). See also Reg. 65 of Table A, first schedule of the Indian Companies Act.

(3) *Colonial Gold Reef etc.* (1914) 1 Ch 382.

(4) *Harben v. Phillips* (1883) 23. Ch. D. 14, 35.

(5) *Re. Waxed Papers* (1937) 2 All England Reports 117.

(6) A. I. R. 1928 Bom. 80.

a proxy. Regulation 67 of Table A is an illustration of a common proxy form which runs as under :—

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve :—

.....Co., Ltd.,

Iof..... in the district of..... being a member of theCo., Ltd., hereby appoint.....of..... as my proxy to vote for me and on my behalf at the..... ordinary (or extra-ordinary as the case may be) general meeting of the company to be held on the.....day of..... and at any adjournment thereof.

Signed this.....day of.....19.....

Member of the aforesaid company.

A proxy must be signed by the member, and if possible it should be written out in the hand-writing of such member. If the Articles require attestation thereof, an unattested proxy would be invalid.¹ It must not be attested by a person in whose favour the proxy has been executed.² If the proxy is left blank as to the name of the person in whose favour it is executed and as to the date of the meeting for which it is executed, the member so executing may authorise any person inclusive of the person in whose favour the instrument is executed to fill up the blank before the proxy is deposited or used.³ A proxy must be stamped before it is executed except when it has been executed abroad. It has now been authoritatively determined that directors may use the company's funds to pay the cost of printing, stamping and paying return postage upon proxy papers containing the names of directors or other nominees as proxies, provided that directors act in good faith in the interests of the company in order to support or pursue a policy which the directors think is proper in the circumstances of the case for the company's benefit.⁴ If it is permitted to send out printed proxy forms for the signatures of the members and return thereof to be deposited with the company as provided under the Regulations and if it is permissible for a member to leave the space for the name of the person in whose favour the proxy is executed and the date of the meeting for which it is executed blank, it is reasonable to hold that the whole of the form of proxy need not be written out in the handwriting of a literate member, it would be sufficient if he authenticates the instrument by his signatures at the proper place; such a writing would be deemed to be in the hand of the appointor or of his attorney duly authorised in writing. The case of appointing a proxy by a company requires further consideration. The company can only appoint a proxy by a resolution of the directors though the person appointed may not be a member of the company at whose meeting such person is to attend and vote. It would be enough in such

1. *Harben v. Phillips*, 23 Ch. D. 14, 32.

2. *In Re. Cullen Re. Parrott*, (1891) 2 Q. B. 151.

3. *Sadgrove v. Bryden*, (1907) 1 Ch. 318, *Earnest, v. Loma Gold Mines*, (1897) 1 Ch. See also *Ex-parte Lancaster*, (1877) 5 Ch. D. 911; *Creditors, Proxy*.

4. *Peel v. London etc., Co.*, (1907) 1 Ch. 5; *Wilson v. London Midland & Scottish Ry. Co.*, (1940) Ch. 393.

a case to send a copy of such a resolution duly certified as correct by the secretary of the appointing company which may be given to the person so authorised to be produced at the time of the meeting for disclosing his identity. The instrument of proxy; however, must be deposited as provided in Regulation 66 mentioned above.

The member appointing a proxy must be entitled to vote. If in the articles of association of a company a member of the company has no right to vote if any call or other debt is outstanding against such member, such a person will not be entitled to appoint a proxy.¹ If the meeting at which voting is to take place by proxy is of a particular class of members the proxy must be in favour of a member of that class.⁴ Even if at the time of execution of the instrument of proxy the person in whose favour it is executed is not a member of the company or is otherwise disqualified to vote at the meeting, there should be no valid objection of his exercising the authority under such a proxy if before the meeting is held the disqualification is removed.³

As already mentioned the instrument of proxy must be deposited 72 hours prior to the time of the meeting. Mere deposit of the proxy at the Registered office of the company is not sufficient. It must be addressed to a proper officer of the company, otherwise the proxy may be invalidated.² A proxy is a delegation of authority for a particular purpose then in contemplation of the person giving it. It cannot be used for any other purpose; for instance, if a proxy is executed in respect of contemplated election between E. & C. for the post of a surgeon to be held in a certain month and the election did not take place owing to the retirement of one of the competitors, it was held that the proxy so given was properly rejected at a subsequent election held in another month between two other competitors.⁵ Where however, articles prescribe that proxies must be in a specified form or as near thereto as circumstances permit and the specified form is a proxy applicable to a single meeting, general proxies, properly stamped, should not be excluded.⁶ A proxy which is valid for a particular meeting would be available at an adjourned meeting.⁷ But if proxy is not deposited within the period prescribed prior to the meeting, but is deposited before the adjourned meeting it would not be valid for such adjourned meeting.⁸

Appointment of a proxy, however, does not preclude the appointer from attending at the meeting itself, and exercising his right to vote, irrespectively of the fact whether he has or he has not given notice of revocation of the proxy, a vote tendered by the proxe in such circumstances should be rejected.⁹ The appointer may attend at the taking of the poll in spite of the fact that he was not present

1. In *Re. Tata Iron and Steel Co. Ltd.*, A. I. R. (1928) Bom. 80.

2. *Re Madras Irrigation and Canal Co.*, (1881) W. N. 120. followed in *Re. Central Bahai Kly. Co.*, (1902) 18 T. L. R. 503.

3. *Bombay Burma Co., v. Shroff*, 29 B. 126

4. *Burnett v. Gill*, *The times*, 13th June, 1906, page 4. *Crew: Meetings* at p. 234

5. *Howard v Hill*, (1889) 59 L. T. 818. *Crew: Meetings* at page p. 235.

6. *Issacs v. Chapman*, (1915) 32 T. L. R. 183.

7. *Sabramania Aiyer v. United India Life Ass. Co. Ltd.*, A. I. R. 1928 Mad. 1215.

8. *McLaren v Thomson*, (1917) 2 Ch. 261; If a poll demanded at a Meeting was directed to be taken at a future date, but the meeting itself was not adjourned the proxy deposited after the date of the original meeting, but before the poll was actually taken could not be counted, *Shaw v. Tati Concessions*, (1913) 1 Ch. 292.

9. *Cousins v. International Brick Co.*, (1931) 2 Ch., 90

at the meeting at which the poll was demanded and he had executed the instrument of proxy in favour of another member.¹ If a proxy is not a shareholder, it is doubtful if he can move a resolution or second or support a resolution moved at the meeting, he is only entitled to vote therein unless the articles otherwise provide.² Where articles provide that votes might be given by proxy but are silent as to the manner in which the proxy is to record such votes, the voting papers, if merely signed by the proxy "for self and proxies" would be in order.³

An objection to the validity of a proxy must be taken, at the time of the voting, that is before the poll, and if any such objection is not taken at that time the validity of the vote given cannot be afterwards questioned.⁴ The chairman has to decide the question of the validity of the proxy.⁵

The objection as to the proxy being unstamped or the stamp not being properly cancelled is also to be decided by the chairman, as an unstamped proxy would not be valid, nor would a proxy form the stamp whereon is not properly cancelled be regarded as valid.⁶ If the proxy is undated, however, it would not be invalid. If a member has given two proxy forms, the later would be recorded as valid, provided it was deposited in time. If, however, a proxy executed subsequent to a prior one was deposited after the time prescribed therefor, but the prior proxy had been deposited within the time prescribed such a prior proxy would be a valid one in spite of the fact that a subsequent proxy in favour of another person had been rendered invalid on account of its having been deposited late.⁶ The death of a shareholder who appointed a proxy, in the absence of provisions in the articles, revokes the authority of the person appointed as a proxy.

It is expedient that the secretary of the company should put down in a register the particulars of the proxies as soon as they are received in a serial number giving the time and date of receipt, the fact of cancellation or non-cancellation of the stamp, the number of the member who has executed the instrument of proxy, according to the register of members, as well as the number of the person appointed as proxy, according to the same register. He should also in the remarks column of the register put down anything which he considers may be relevant for the purpose of determining whether the proxy is in accordance with law or not. If the company maintains a proxy register with the following columns, it might prove useful :—

1. Serial Number.
2. Date of receipt of proxy.
3. Time of receipt of proxy.
4. Whether stamped or not.
5. Whether stamp cancelled properly or not.
6. Name of the member executing instrument of proxy.
7. Number of the appointer in the register of members.
8. Whether the appointer has the right to vote.
9. Name of the person appointed proxy.
10. The number of the person appointed as proxy in the register of members.

1. *Campbell v. Maund*, (1836) 6 L. T. M. C. 145.

2. *Crew : Meetings*, 1945 Ed. at p 239

3. *Foerster v. Newlands Mines*, (1902) 46 S. J. 409. See *Crew Meetings* : p 233, 234.

4. *Colonial Gold Reef Co v. Free States Rand Ltd.*, (1914) 1 Ch. 382.

5. *Wall v. Exchange and Co. Ltd.*, (1926) 1 Ch. 143.

6. *In re Tata Iron and Steel Co., Ltd.* A. I. R. 1928 Bom. 80.

11. Number of proxies held by the person appointed by other members.
12. Number of valid proxies held by a member, (as decided by the chairman).
13. Time and date of the meeting for which proxy is deposited.
14. Any subsequent proxy executed by the appointer with particular as to the time, date of deposit and the name of the appointee.
15. Remarks.

ALTERNATIVE FORM

Register of Proxies Received for Annual Meeting.

The following is the list of proxies received for the.....annual meeting of the shareholders to be held on....., 194 at..... at....., the registered office of the company, the proxies are subject to scrutiny at the commencement of the meeting.

Name of the shareholder	No. of shares.			In favour of	Date & time of receipt		Remarks. Initials of Secretary.
	Ord.	Def.	Pref.		Date	Time	

Reading of Notice Convening the Meeting.

The chairman shall then call upon the secretary to read a notice convening the meeting. The importance of this is not generally recognized and it is considered as a sheer waste of time. The usual method of recording this formality is to state that the notice having been circulated was taken as read. The object of reading the notice is to draw the pointed attention of the members and the chairman, if any essential requirement has been omitted to be stated in the notice, especially in the case of notice convening extraordinary general meeting. The notice has to state the gist of the extraordinary resolution that is intended to be passed at the meeting. In this connection S. 81 should be perused carefully regarding the period of notice and the contents of the notice.

Sub-sections (1) and (2) of section 81 deal with the mode and time for giving notices of an extraordinary general meeting. It is necessary that the notice should clearly specify as to what is the extraordinary or special resolution that is to be passed at the meeting. If that is not done the resolution so passed can be declared invalid. It is for this reason that under the Indian Companies Rules, 1941, the form of return to be filed under S. 82 (1) with the registrar prescribes the mentioning of date of despatch of the notice specifying the intention to propose the resolution as a special resolution or extraordinary resolution. For a special resolution a period of 21 days has been laid down but this period can be curtailed if the members, to whom, it has to be given agree in writing to a lesser period. We reproduce below the definition and procedure relating to passing of extraordinary and special resolutions.

S. 81. (1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three fourths of the such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

Extraordinary
and special resolutions.

(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twentyone days' notice specifying the intention to propose the resolution as a special resolution has been duly given :

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twentyone days' notice has been given.

(3) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed a declaration of the chairman on a show of hands that the resolution is carried, shall unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a poll may be demanded.

(5) In a case where, if a poll is demanded, it may in accordance with the articles be taken in such manner as the chairman may direct; it may, if the chairman so directs, be taken at the meeting at which it is demanded.

(6) When a poll is demanded in accordance with this section, in computing the majority on the poll, reference shall be had to the number of votes to which each member is entitled by the articles of the company or under this Act.

(7) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles or under this Act.

Period of Notice for an Ordinary General Meeting. On a perusal of section 79 (1) of the Indian Companies' Act, it would appear that this sub-section is not meant to apply to a private limited company except that which is subsidiary of a public limited company. This sub-section runs as under :—

79 (1) The following provisions shall have effect with respect to meetings of a company other than a private company not being a subsidiary of a public company and the procedure thereat, notwithstanding any provision made in the articles of the company in this behalf :—

Provisions as to meetings and votes.

(a) a meeting of a company other than a meeting for the passing of a special resolution may be called by not less than fourteen days' notice in writing ; but with the consent of all the members entitled to receive notice of some particular meeting that meeting may be convened by such shorter notice and in such manner as those members may think fit ;

(b) notice of the meeting of company with a statement of the business to be transacted at the meeting shall be served on every member in the manner in which notices are required to be served by Table A and for the purpose of this clause the expression ' Table A ' means that table as for the time being in force ; but the accidental omission to give notice to or the non-receipt of notice by, any member shall not invalidate the proceedings at any meeting ;

(c) five members present in person or by proxy, or the chairman of the meeting or any member or members holding not less than one-tenth of the issued capital which carries voting rights shall be entitled to demand a poll : Provided that in the case of a private company if not more than seven members are personally present, one member, and if more than seven members are personally present, two members shall be entitled to demand a poll ;

(d) an instrument appointing a proxy, if in the form set out in Regulation 67 of Table A, shall not be questioned on the ground that it fails to comply

with any special requirements specified for such instruments by the articles ; and

(e) any shareholder whose name is entered in the register of shareholders of the company shall enjoy the same rights and be subject to the same liabilities as all other shareholders of the same class.

It is to be noted that Clause (c) of sub-section (1), enacts : " Provided that in the case of a private company if not more than seven members are personally present, one member, and if more than seven members are personally present, two members shall be entitled to demand a poll.

The above proviso indicates that in spite of the exclusion of a private company from the operation of sub-section (1) of section 79, the legislature has made a provision as regards the demanding of a poll in the case of a private company in this very sub-section. Again section 17 (2) of the Indian Companies' Act provides, *inter alia*,

" Articles of Association may adopt all or any of the regulations contained in Table A in the First Schedule, and shall in any event be deemed to contain regulations identical with or to the same effect as regulations 56..... contained in that table."

Regulation 56 provides :

At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the provisions of clause (c) of sub-section (1) of section 79 of the Indian Companies Act, 1913 and unless a poll is so demanded a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the books of proceedings of the company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

It is evident therefore that in spite of the opening words in sub-section (1) of section 79 to the effect that the provisions of that section shall have effect with respect to meetings of a company other than a private company, the provisions relating to the demand of poll contained in sub-clause (c) of sub-section (1) of section 79 must be deemed to apply to all private companies. It is necessary to determine whether the provisions of sub-clause (a) relating to the period of notice also apply to the meetings of a private company. There is no reference in sub-clause (a) to a private company and there is no other statutory provision providing that a meeting of a private company may be or may not be called unless 14 days' notice in writing is sent to all the members of the company entitled to receive notice.

Reasonable notice. In this view of the case a reasonable notice should suffice in case of a private company, but it must be sent to all the members entitled to receive such notice otherwise the meeting would be invalid. In England, a notice of seven days is provided in respect of ordinary meeting of a public limited company. No statutory provision exists providing for a notice of a definite period in case of an ordinary general meeting of a private company. As there appears to be an absence of judicial authority in this behalf, it would be expedient for the directors to call an ordinary general meeting of private company after a notice of 14 days is sent in writing to the members entitled to receive such notice. If a notice for a shorter period is given, the Court would have to determine whether the notice in the particular case was reasonable or not and in most cases the Court probably would deem 14 days' notice as reasonable.

When a resolution is duly recorded in the proceedings book as having been passed at a meeting and signed by the chairman, it is a conclusive proof of the fact that the resolution was so passed.¹

Ordinarily, the chairman has an inherent right to adjourn the meeting,² but the right is to be exercised in a proper manner and, not with an object of defeating the purpose of the meeting. Thus the chairman has no power to stop the meeting at his will and pleasure. If he attempts to do so, the meeting can appoint another chairman and resolve to go on with the unfinished business.³ A special provision has been made in this respect in the articles of association in regulation 55 of Table 'A' which prescribes the powers of a chairman in regard to adjournment.⁴

Generally speaking the chairman must be a person of ability, who has some experience of conducting the meetings and guiding their deliberations. It is a different matter that at an informal meeting where only the shareholders are present a chairman may not have to exhibit any talent or governing capacity; but in meetings where there are contentious matters to be discussed and especially where there are two rival parties of shareholders fighting for the control of the company, the chairman should be a person who is capable of handling the situation. In the following passage the qualities of a chairman have been beautifully defined :

" He should be able to govern a meeting with genial domination and be a benevolent autocrat not overbearing or brusque in manner, but determined in a quiet way to have the business of the meeting transacted in an orderly and expeditious manner. He should have a wide knowledge of men, and some acquaintance with the subject under discussion. He should remember that men at meetings are often but children of a large (sometimes not much larger) growth, and should combat their petulance, unreasonableness and pettiness by common sense, sweet reasonableness and quiet determination. He must believe in himself, but not allow his masterfulness to obtrude too much. A chairman should have strength of character; hearing and seeing all things, but conveniently and quietly ignoring at times those matters which might better have been left unsaid or not done."⁵

Usually the articles of association provide that the chairman of the board of directors shall preside over the general meetings, and in his absence any of the directors of the company present. If neither the chairman nor any of the directors is present then the shareholders may elect a chairman from amongst themselves. This is a salutary provision and is recommended for adoption, for the simple reason that the chairman of the board of directors is bound to have experience of guiding meetings and so are supposed to be the directors. The functions and duties of a chairman may be stated in brief as under :—

1. To see that the meeting is duly convened as provided by law or the articles of association of the company.

Functions and duties of chairman.

1. *Indian Zoedone Company*, (1884) 26 Ch. D 70; See also *Betts and Co v Macnaghter*, (1910) 1 Ch. 430; *Dhakeshwari Cotton Mills Ltd. v. Nilkamal*, I. L. R. (1938) 1 Cal. 90.

2. *Reg. v. Doyle*, 113 E. R. 763; *Queen v. Wimbledon Local Board*, (1882) 8 Q. B. D. 459.

3. *International Dwellings Society, v. Sykes*, (1894) 3 Ch. 159; *Catesby v. Burnett*, (1916) 2 Ch. 325. If adjournment is proper any further resolution passed by members present would be void; *R. v. Gaborian*, 103 E. R. 935.

4. See *Parshuram v. Tata Industrial Bank*, 47 Bom. 915.

5. *Crew : Meeting of Private Companies*, 1945 Ed. at p. 37

2. To see that the necessary quorum is present.
3. To examine the proxies and the register before the meeting starts.¹
4. To see that the proceedings are conducted properly and in an orderly manner.²
5. To see that the items on the agenda are taken in the order set out therein and if any departure is necessary it is done with the consent of the meeting.
6. To determine as to who is to address the meeting and that some other person does not speak at the same time.³
7. To put all proper amendments to the meeting.⁴
8. To prevent members from carrying on discussions between themselves while another person is addressing the meeting and to prevent irrelevant discussions.
9. To give rulings on objections raised by members relating to procedure or the validity of certain acts requiring, immediate decisions.⁵
10. To see that minutes of the meeting are correctly recorded and signed by him.⁶
11. If for any reason the meeting cannot proceed, to adjourn the same to such date and time as may be provided in the Articles of Association convenient to the majority of members present.⁷

The most important item on the agenda of the annual general meeting is the adoption of the directors report and the balance-sheet together with auditors report and it is for this reason that this item is generally taken up in the first instance after the notice convening the meeting has been read. The balance-sheet and profit and loss account exhibits the true position of the company and the shareholders have got an inherent right to ask questions regarding statements appearing in the accounts. But as a rule the shareholders have no right to inspect the accounts of the company.⁸ However this right can be given to the shareholders if so desired by the articles of association. Usually the shareholders do not go deep into accounts as long as they are getting their due dividends. It is only when the company begins to run under loss that the suspicions of the shareholders are aroused. Great care, however, is to be taken in the matter of declaration of dividends and the cardinal principle of law that dividends can only be paid out of the profits of the year or any other undistributed profit, should never be lost sight of. In this connection Reg. 97 of table A, which is compulsory provides :—

“No dividends shall be paid otherwise than out of profits of the year or any other undistributed profits.”

1. *Wall v. Exchange and Co. Ltd.*, (1926) 1 Ch. 143.

2. *In re. Indian Zoedone Co.*, 26 Ch. D. 70.

3. It is the *prime facie* right of every member attending a meeting to be heard and to be allowed to support or oppose any resolution before the meeting *Const. v. Horris*, (1824) T. R. 496. See also *Crew : Meetings* pp. 182, 183. But he is entitled to speak for a reasonable time, *Parshuram v. Tata Industrial Bank*, 47 B 915.

4. *Henderson v. Bank of Australia*, 45 Ch. D. 330. *Shamdasain v. Tata Industrial Bank*, 1925 B. 49. As to whether amendment is proper or not, see *In re. Teed, and Bishop Ltd.*, 84 L. T. 561. See also observations of Lord Selborne L. R. *Ashbury by etc. v. Riche*, L. R. 7 H. L. 653 at 695.

5. *Wandsworth and Putney Gas Light & Coke Co. v. Wright*, (1870) 22 L. T. 404.

6. Wrong declaration as to certain resolution “as having been passed” is *ultra vires* and not binding : *Dhakeswanri Cotton Mills v. Nilkamal*, 1 L. R. (1938) 1 Cal. 90.

7. See *Wall v. London & Northern Assets Corpn.*, (1898) 2 Ch. 469: whether a closure motion should be allowed to be moved. When a Chairman is given power to adjourn the meeting under the Articles of Association, he cannot be compelled to adjourn the meeting even if majority of members want it : *Salisbury Gold Mining Co. v. Hathorn*, (1897) A. C. 268.

8. *Halsbury 2nd Ed.* at p. 382. A proxy however cannot inspect it. *Mrs. Fakirji v. Person*, 1926 S. 295. Right to inspect when given by Articles, cannot be curtailed by restrictive resolutions of the Board. *Rameshwar Ltd. v. Calcutta Wheat & Seed Assocn.*, A. I. R. 1938 C. 89.

In other words, it means that dividends cannot be paid out of capital. This rule has been laid down to ensure that capital is always kept intact. The proposition had been and continues to be a subject of controversy and Reg. 97 represents the position of law at the time of amendment of the Companies Act in the year 1936. The words 'of the year or any other distributed profits of the company' were added by the Amending Act in the above regulation. The addition of these words has only given support to the authorities affirming that the profits must be those arising out of the business transactions of the company. Profits ordinarily represent the excess of revenue over expenditure in an accounting period, after providing for the depreciation of various capital assets. This is, however, not the proper view. There is no express statutory prohibition that dividends cannot be paid out of capital, but it is only by

implication of the provisions of law stating that capital cannot be reduced without the sanction of the Court (and a special resolution at a general meeting) that we arrive at the above conclusion. The two propositions that dividends must not be paid out of capital and that dividends may only be paid out of profits are not identical but diverse. The first is the requirement of statute and cannot be dispensed with, the latter is in Table A or the articles of the particular company and is one of the regulations of the company which has to be construed and applied. A company which has a balance to the credit of its profit and loss account is not bound at once to apply that sum in making good an estimated deficiency in value of its capital assets. It may carry it to a suspense account or reserve, and if the assets subsequently increase in value the amount neither has been nor will be a part of the capital. If therefore a part of that balance is used in paying a dividend that dividend is not paid out of capital, because the same has never become capital, although it still remains a question whether it has been paid out of profits or not. It has been pointed out by Lindley L. J. in *Lee v. Neuchatel Asphalte Co.*¹ that there is nothing in the statute requiring a company to keep up the value of its capital assets to the level of its nominal capital. The requirement is merely negative that dividend shall not be paid out of capital, and the balance to the credit of profit and loss account does not automatically become part of the capital assets, because the value of the actual capital assets has depreciated to an amount equal to or exceeding that balance.

Although balance to the credit of profit and loss account is treated as quite separate from capital depreciation, yet appreciation in capital assets is distributable as profits. Similarly there is nothing in law to prevent a company formed to work a wasting property, e.g., a mine or a patent, from distributing as dividend the profits arising out of the excess of their revenue receipts over expenditure of the year, without providing for the capital depreciation or to

set apart a sinking fund.² Whatever may be the legal position, it is unwise for a company to distribute its profits without consolidating its position, by providing for unexpected losses through the creation of a reserve fund; by providing for depreciation of wasting property, plants and machinery, building, furniture and other capital assets liable to depreciation; and by making provision for bad debts which may be incidental to a particular trade; regulations dealing with the subject in the articles of association should clearly state all these matters for guidance of the directors.

It should be noted that the responsibility of the directors in this respect is great. Before signing the balance-sheet it is the duty of every director to see that dividends were not being paid out of capital by over-valuing the stocks in trade or without making adequate provision for depreciation etc. as may be required by articles of association or otherwise in the interests of business. If they act

1. 41 Ch. D. 1, 22. See also remarks of Farewell J. in *Bond v. Barrow Haematite Steel Co.* (1902) 1 Ch. 353 at p. 365.

2. *Lee v. Neuchatel Asphalte Co.*, quoted above.

without making proper enquiries resulting in dividends being paid out of capital they can be held personally liable. Although the liability of a director depends more or less on the particular circumstances of each case, yet where the directors have been wilfully shutting their eyes to the acts of the agents or managing agents and recklessly sanctioning acts of such agents consciously and thereby aiding misfeasance, misapplication and falsification of balance-sheets, and the state of affairs continues over a number of years, the directors are guilty of misconduct.¹ Directors who are knowingly parties to the payment of dividend out of capital are liable to proceedings by action or in the case of winding up by misfeasance summons under S 235.² In another case it was held that where the directors fall short of the standard of care which they ought to exercise, the onus is on them to show that dividends have been paid out of profits.³

Having known the powers of the directors regarding declaration of dividends out of profits, it should be borne in mind that the company in general meeting can declare dividend only to the extent of amount recommended by the directors and not further. It has got the power to declare a less dividend, but not more than what has been recommended in the directors' report. In this connection Reg. 95 of Table A provides :—

“Reg. 95. The company in general meeting may declare dividends ;
but no dividend shall exceed the amount recommended
Declaration of dividend. by the directors.”

This regulation has been made compulsory for adoption under S. 17. The intention of restricting the power of the shareholders was that the shareholders being interested in getting as much dividends as they can would always look to their own interest and may thereby harm the business of the company by not leaving sufficient funds for meeting unforeseen losses. The directors being in direct contact with the business operations are in a better position to judge as to what amounts can be conveniently distributed in
Primarily concern of directors. But this provision is sometimes abused to deprive the shareholders of their legitimate rights, when the interest of the directors in the capital of the company is not very large, or they want to bring down the value of the shares for reasons of their own, or they want to drive out certain shareholders by making their investments unproductive. Provisions, however, can be made in the articles of association of the company by which a certain portion of the profits can be made compulsorily distributable. If no such provision is made the company is not bound to do so.⁴ Under such circumstances therefore if the directors in their discretion think that a dividend should not be declared the courts will not even come to the assistance of the shareholders in getting the profits distributed, in the form of dividends. The law has been clearly stated by their Lordships of the Privy Council :—

“Their Lordships are not aware of any principle which compels a joint stock company while a going concern to divide the whole of its profits among its shareholders. Whether the whole or any part should be divided, or what portion should be divided and what portion retained are entirely questions of internal management, which the shareholders must decide for themselves, and the court has no jurisdiction to control or review their decision or to say what is a ‘fair’ or ‘reasonable’ sum to retain undivided of what reserve fund may be properly required. And it makes no difference whether the undivided balance is retained to the credit or profit and loss account, or carried to the credit of a rest or reserve fund, or appropriated to any other use of the company. These are questions for the shareholders to decide subject to any restrictions or directions contained in the articles of association.”⁵

1. *Govind v. Rang Nath*, 54 Bom. 226.

2. *Prefountain v. Grenier* (1907) A. C. 101.

3. *Leeds Estate etc. Co. v. Shepherd*, (1887) 36 Ch. D. 787.

4. *Euling v. Israel & Oppenheimer Ltd.*, (1918) 1 Ch. 101.

5. *Burland v. Earl*, (1902) A. C. 83, 95.

Annual Return. After a general meeting is called, the next duty of the officer-in-charge of a company is to send an annual return under S. 32 of the Act. Although a summary of the returns and documents to be filed with the registrar has been given elsewhere in this book but being an annual return which is to be sent, it may be dealt with in detail here.

S. 32. (1) Every company having a share capital shall within eighteen months from its incorporation and thereafter once at least in every year make a list of all persons who, on the day of the first or only ordinary generally meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company.

(2) The list shall state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and persons who have ceased to be members respectively and the dates of registration of the transfers, and shall contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars:—

(a) the amount of the share capital of the company, and the number of the shares into which it is divided ;

(b) the number of shares taken from the commencement of the company upto the date of the return ;

(c) the amount called upon on each share ;

(d) the total amount of calls received ;

(e) the total amount of calls unpaid ;

(f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount (i) (in respect of any shares or debentures), since the date of the last return, (ii) (or so much thereof as has not been written off at the date of the return) ;

(g) the total number of shares forfeited ;

(h) the total amount of shares or stock for which share-warrants are outstanding at the date of the return ;

(i) the total amount of share-warrants issued and surrendered respectively since the date of the last return ;

(k) the number of shares or amount of stock comprised in each share-warrant ;

(l) the names and addresses of the persons who at the date of the return are the directors of the company and of the persons (if any) who at the said date are (the managers or managing agents of the company, and the changes in the personnel of the directors, managers and managing agents since the last return together with the dates on which they took place) ; and

(m) the total amount of debt due from the company in respect of all mortgages, and charges which are required to be registered with the registrar under this Act.

(3) The above list and summary shall be contained in a separate part of the register of members, and shall be completed within (iv) (twenty one days) after the day of the first or only ordinary general meeting in the year, and the company shall forthwith file with the registrar a copy signed by a director or by the manager or the secretary of the company, together with a certificate from such

director, manager or secretary that the list and summary state the facts as they stood on the day aforesaid.

(4) A private company shall send with the annual return required by sub-section (1) a certificate signed by a director or other officer of the company that the company has not, since the date of the last return, or in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under sub-clause (b) of clause 13 of sub-section (1) of section 2 are not to be included in reckoning the number of fifty.

(5) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company, who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Period of Return.—It should be clearly understood that the forwarding to the registrar of a return under this section is not a mere formality, as a list and summary for members in accordance with the facts should be carefully drawn up. Besides the penalties provided in the section for non-filing of such a return, a charge may be sustained against a person who is responsible for filing an incorrect return.

It would be seen that the return under this section is to be sent within 21 days after the date of the first or annual ordinary general meeting in the year. Usually the companies hold one annual general meeting and send a return within 21 days of the meeting to the registrar. But a company can hold a number of ordinary general meetings in a year. It is evident that return under this section is to be sent only for the first ordinary general meeting held in a year, or if it is the only general meeting to be held, then of that meeting.

Certificate by a Private Limited Company.

The provisions of sub-section 4 should be clearly understood and certificate signed by the officer forwarding the return that the company has not since the date of the last return issued any invitation to the public to subscribe for any shares or debentures of the company, and in case the number of shareholders exceed 50, then those in excess of 50 are employees of the company and are not to be included in reckoning the requisite number, is to be appended at the close of the return.

CHAPTER VII

DEBENTURES

A private company like a public company is entitled to borrow money on the security of its assets by issue of a debenture or debentures or debenture stock. The only restriction placed on a private company is that its articles must prohibit any invitation to the public to subscribe for the debentures of the company.

The expression 'Debenture' has not been defined but it may be regarded as an acknowledgment of debt and when secured by the assets of the company, such acknowledgment is known as mortgage-debenture. Again debentures may be of two kinds, namely:

(i) those which are secured by a mortgage of a specific property of the company whereby a fixed charge is created in favour of the debenture-holders of the company, and

Kinds.

(ii) those which are secured by what is known as a 'floating charge,' that is, the assets of the company remain charged in favour of such debenture-holders but the company is entitled to deal with its assets, so charged, in any manner it likes and the charge is said to float over such assets and does not attach thereto until certain contingency happens, as for example, when the company fails to pay the interest on the due date or its property is attached in execution of a decree of any other creditor or its financial position become so weakened that it is unable to carry on its business, or a winding up petition is filed against the company; in such and other similar events provided for in the debenture deed, the floating charge crystallises and becomes fixed on the assets of the company, which were heretofore subject to such a floating charge and such debenture-holders rank in priority to all unsecured creditors of the company. The facility thus provided to the company to obtain a loan on issue of debentures having floating charge only on its assets and in the meanwhile to carry on its business is one which is very often availed of by private and other companies who come to be in need of financial assistance. The peculiar feature of such a charge is that it remains floating or dormant until the undertaking ceases to be a going concern or when the persons in whose favour the charge is created intervene in accordance with the terms of the debenture deed.¹

In *Illingworth v. Hauldsworth*,² while referring to a 'floating charge' or 'floating security' Lord Halsbury said :

"It is something which is to float, not to be put into immediate operation, but such that the company is to be allowed to carry on its business. It contemplates not only that it should carry with it the 'book debts' which were then existing, but it contemplates also the possibility of those book debts being extinguished by payment to the company, and that other book debts should come in and take the place of those that have disappeared."

Lord Macnaghten said :

"I should have thought there were not much difficulty in defining what a floating charge is in contrast to what is called a specific charge. A specific charge, I think, is one that without more fastens on ascertained and definite property capable of being ascertained and defined ; a floating charge, on the other hand, is ambulatory and shifting in its nature hovering and so to speak floating with the property which it is intended to affect until some event occurs or some act is done which causes it to settle and fasten on the subject of the charge within its reach and grasp."

The special characteristic of 'floating charge' are :

(1) It is a present charge though it does not finally attach or crystallize upon any specific property until the happening of some event which puts an end to the right of the company to deal with the property in the course of its business.³ A floating security is not a future security; it is a present security which presently affects all the assets of the company expressed to be included in it. On the other hand it is not a specific security. The holder cannot affirm that the assets are specifically mortgaged to him. The assets are mortgaged in such a way that the mortgagor can deal with them without concurrence of the mortgagee. A floating security is not a specific mortgage of the assets plus a licence to the mortgagor to dispose of them in the course of his business but is a floating mortgage applying to every item compromised in the security but not specifically affecting in time until some

1. *Bir Chand v. Jhon Brothers*. A. I. R. (1934) All. 161, following *Govt. Stock & Other Securities Investment Co. v. Manila Ry. Co.*, (1897) A. C. 81.

2. 1904 A. C. 355.

3. *Imperial Bank v. Bengal National Bank* 58 C. 136 (over-ruled on other points. in A. I. R. (1931) P. C. 245.)

event occurs or some act on the part of the mortgagee is done which causes it to crystallize into a fixed security.¹

(2) It is not necessary that the floating charge must be created over the whole of the property of the company, it may be created even on a part² of the property of the company, as, for example, a floating charge can be created with regard to a particular class of assets, namely furniture³ or book-debts⁴ or plant, or on the profits⁵ of certain schemes or even of a particular transaction.⁵

(3) It is not necessary to use any specific words to create a floating charge. If the expressions used make it clear that the assets of the company are subject to such a kind of charge, then the transaction will be presumed to be a floating security.⁶

(4) So long as the floating charge does not crystallize or become fixed, that is, until any of the events provided against in the debenture deed, causing the floating charge to become crystallized or fixed happen, the company can carry on its business in the ordinary way and can deal with the properties, even though subject to the floating charge, in the ordinary course of business in any way it likes.⁷

(5) The debenture-holder having floating charge on the assets of the company is preferred to an execution creditor provided the latter has not realised his dues by sale of the properties prior to the crystallisation of the floating charge of the debenture-holder.⁸

(6) A floating charge continues to remain a floating security until

(i) the company stops its business, or

(ii) when a winding up petition is presented against the company, or

(iii) a receiver is appointed with respect to the assets of the company, or

(iv) any other contingency provided for in the debenture deed occurs whereby it is stipulated that the charge shall be crystallized and fixed. When any of the above contingencies takes place, the floating charge becomes attached to the assets of the company, and the debenture holder becomes entitled to all the rights of specific mortgagee or mortgagees.⁹

1. *Evens v. Rival Granite Quarries Ltd.*, (1910) 2 K. B. 979; *In re Yorkshire Wool-combers' Association*, (1903) 2 Ch. 284; *In re Standard Manufacturing Company*, (1891) 1 Ch. 627; *Driver v. Broad*, (1893) 1 Q. B. 539, 774.

2. *Illingworth v. Hauldsworth*, (1904) A. C. 355; *Messrs Maheshwari Bros. v. O. L. Indra Sugar Works Ltd.*, I. L. R. (1938) All. 896 (on Appeal I. L. R. 1942 All. 242.)

3. *National Provincial Bank v. United Electric Theatres*, (1916) 1 Ch. 132.

4. *In re. Yorkshire Wool-combers Association*, (1903) 2 Ch. 284.

5. *Hoare v. British Columbia Development Association*, (1912) 107 Law Times 602.

6. *Wheatly v. Silkstone Company*, 29 Ch. D. 15, *National Provincial & Union Bank of England Ltd. v. Charnley*, (1924) 1 K. B. 431.

7. *Messrs. Maheshwari Bros. v. Indra Sugar Works Ltd.*, I. L. R. (1938) All. 896; *Government Stock etc. Co. v. Manila Rail Company*, (1897) A. C. 81; *In re. Automatic Bottle Makers Ltd.*, (1926) Ch 412. *Nalla Perumulla v. Krishna Aiyangar*, 30 I. C. 286; *Balasubramania v. Kandswami* 32 I. C. 91.

8. *Evens v. Rival Granite Quarries Ltd.*, (1910) 2 K. B. 979.

9. *In re. Panama & etc. Company*, L. R. 5 Ch. App. 318.

The expression "undertaking" of the company means all the property, present and future of the company and it has been held that a charge created thereon was effective and was to operate by way of floating security. Giffard, L. J. said in *Panama etc. & Co.*¹ "I

Undertaking. take the object and meaning of the debentures to be this, that the word 'undertaking' necessarily infers that the company will go on, and that the debenture-holder could not interfere until either the interest which was due was unpaid or until the time had arrived for the payment of the principal and that principal was unpaid. I think the meaning and object of the security was this, that the company might go on during that interval, and furthermore, that during the interval the debenture-holder would not be entitled to any account of mesne profits or of any dealing with the property of the company in the ordinary course of carrying on its business..... I see no difficulty or inconvenience in giving that effect to this instrument; but the moment the company comes to be wound up and the property has to be realised, that moment the rights of these charge-holders beyond all question attach. My opinion is that, even if the company had not stopped, the debenture-holders might have filed a bill to realise their security. I hold that under these debentures they have a charge upon all property of the company, past and future, by the term 'undertaking' and that they stand in a position superior to that of the general creditors, who can touch nothing until they are paid."

The expression "Book debts" has not been defined but it is said to be comprising of "debts arising in a business in which it is the proper and usual course to keep books and which ought to be entered in such books"² or in other words "such debts accruing in the ordinary course of trade as are usually entered in the trade books."³ A charge or a mortgage of book debts can be made so as to effect future book debts also.⁴ The words "all the property of the company," however, do not include the ordinary books kept under the law by the company.⁵

If immovable property of the company is made the subject matter of a charge or mortgage in favour of the debenture-holder, the instrument creating such a security requires registration under Sec. 17 of the Indian Registration Act.⁶

Stamp. As regards the stamp duty payable on a debenture, it is provided in Article 27 of Schedule I of Indian Stamp Act as follows :—

27. Debenture (whether a mortgage debenture or not), being a marketable security transferable

(a) by endorsement or by a separate instrument of transfer ;

(b) by delivery.

The same duty as a Bond (No. 15) for the same amount.

The same duty as a conveyance (No. 23) for a consideration equal to the face amount of the debenture.

Explanation.—The term "Debenture" includes any interest coupons attached thereto but the amount of such coupons shall not be included in estimating the duty.

1. (1870), L. R. 5 Ch. 318. Whereby the debenture a company charges its undertaking right to the renewal of a lease is also included in the charge, *Gough's Garages Ltd. v. Pugsley*, (1930), 1 K. B. 625.

2. *Official Receiver v Tailby*, 13 A. C. 523; *Dawson v. Isle*, (1906) 1 Ch. 633; *Law Car & General Insurance Corp.* (1911) W. N. 91, 101.

3. *Shippley v. Marshall*, 14 C. B. (N. S.) 566; 32 L. J. C. P. 258.

4. In *Rajamier v. Subramanyam*, 52 Mad. 465 it was held following in *re. Steel Wing Co. Ltd.*, (1921) 1 Ch. 349 that transfer of a part of a debt was valid. See however *Forster v. Baker*, (1910) 2 K. B. 636.

5. *Clyne Tinplate Co.*, (1882) 47 L. T. 439. See also *re. Capital Fire Ins. Assn.* (1883) 24 Ch. 408. *Angle v. South Metropolitan & etc. Co.*, (1892) 1 Ch. 442.

6. *Viswanadhan v. Menon*, L. R. 1939 Mad. 199.

Exemptions.—A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage deed, duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debenture-holders : provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed. See also Bond (No.15) and sections 8 and 55.

The principal tests as to whether a charge is a floating one are :—

Tests of a floating charge. (i) Is it a charge upon all or a certain class of assets, present or future ?

(2) Could the assets charged in the ordinary course of business be changed from time to time ?

(3) Has the company power until such step is taken by the chargees to carry on the business of the company in the ordinary way ?¹

Debentures are usually issued in a series of the same kind of the denomination of Rs. 10/- or Rs. 100/- each whereby the company undertakes to pay the principal within a fixed period say 20 or 50 years and promising to pay the interest regularly say every six months and are secured on the undertaking of the company which may include the movable property, stock-in-trade, book debts and uncalled capital of the company, etc. The debenture deed contains usually coupons relating to the periodical payment of interest as fixed beforehand so that the debenture-holder cuts out the last coupon and obtains the interest for the first six months and similarly presents other coupons according to due dates mentioned thereon to the company or its bankers for realization of the interest as it accrues due. Although it is not illegal to issue a single debenture but usually series of debentures are issued in which each debenture ranks *pari passu*, that is, with the same priority amongst the debenture-holders of that issue. If large number of debentures are issued and are taken up by different persons it is usual now-a-days for the company to execute a trust deed in favour of two or three trustees for the debenture-holders whereby a charge is created in favour of the trustees for the benefit of the debenture-holders. Thus a debenture deed on the face of it usually contains the principal and the nominal value thereof, the undertaking by the company to pay the principal sum in accordance with the conditions endorsed on the reverse of the debenture deed, a clause relating to the payment of interest on the dates fixed, another clause charging the properties of the company to secure debentures and reference is made to the conditions endorsed thereon which form part of transaction and each debenture deed is usually sealed with the seal of the company, if any, and signed by the officer or director of the company as authorized under the articles or resolution of the company or the board, as the case may be. The endorsed conditions provide for :

Form of debenture.

Debenture trust deed.

Contents of debenture deed.

(i) *pari passu* clause, whereby each subscriber to the debenture is placed on the same footing as any other debenture holder,

(ii) a register to be kept containing the particulars of the debenture-holders and in some cases of the registered holders of the debentures when according to the conditions of the issue only a registered holder is recognized by the company,

1. *Masheshwari Bros. v. Indra Sugar Works*, A. I. R. (1938) All. 574, per Harries J. ; upheld in I. L. R. 1942 All. 242, F. B. Their Lordships in the Full Bench case appear to be in error when they ascribe the above tests to their Lordships of the Privy Council in *Imperial Bank of India, v. Bengal National Bank Ltd.*, (A. I. R. 1931 P. C. 245) ; the above tests appear to have been quoted by Harries J. from a passage in *Hauldsworth v. Yorkshire Woolcombers' Association Ltd.*, (1903) 2 Ch. 284, per Romer L. J.

- (iii) transfer register of debentures and the period for which the transfer register is closed,
- (iv) conditions relating to joint holders of debentures
- (v) exclusion of equities between company and the various transferees of the debentures,
- (vi) payment by the company of the principal sum due after notice to debenture holders,
- (vii) conditions when the principal moneys secured become immediately payable,
- (viii) execution of the trust deed for the benefit of the debenture-holders,
- (ix) place of payment and service of notice on the debenture-holders.

Classes of debentures. The principal classes of debenture are the following :—

- (1) debentures payable to bearer,
- (2) debentures payable to registered holders,
- (3) debentures payable to registered holders but the interest is payable to the bearer of the coupons,
- (4) debentures payable to bearer but with power for bearer to have them placed on the register and to have them at any time withdrawn therefrom.

Such debentures may be

- (a) naked, that is not secured by any mortgage or charge, or
- (b) secured debentures *i.e.*, either
 - (i) mortgage debentures secured by mortgage of specific property, or
 - (ii) debentures creating a floating charge on assets or undertaking of the company or part thereof.

Secured debentures whether by mortgage of specific property or by way of floating charge on the assets of the company may be accompanied or secured by a trust deed.

In recent times instead of the issue of debentures of a series the company borrows money by issue of what is known as debenture stock which, to use Lord Lindley's words, is "borrowed capital consolidated into one mass for the sake of convenience". Usually we designate the instrument by which such a kind of security is created by the name of a "debenture" and whereas debenture stock is the description of a debt or sum secured by an instrument. Debenture stock may be owned in any fractional sum, *e.g.* Rs. 36/14/6 while a debenture is always of a round sum as, for example Rs. 10/- or Rs. 100/-. There is no appreciable difference in the rights of the debenture-holders or the debenture stock holders. Normally a debenture is payable after fixed period, say 20, 40 or 50 years, while in the case of a debenture stock it is usually payable only in the event of winding up or of default by the company in paying the interest for, say, six months, the company reserving the right to redeem the same after say, 10, 20 or 30 years. Debenture stock is usually secured by a trust deed though the same is the case frequently with the debentures also. In the case of a transfer of registered debenture the transferee keeps the original debenture while in the case of a transfer of registered debenture stock the certificate of title is delivered to the company which issues a new certificate in favour of the transferee. It is apparent that a debenture-holder may have a number of debenture deeds but in the case of a debenture stock holder he has only one deed evidencing the total number of stock held by him. There is no appreciable difference as to the payment of interest or the security

which such a creditor has, but whenever such a security is sought to be enforced, the debenture stock holder has to pursue his remedies through the trustees under the trust deed while a debenture-holder is entitled to act independently.

In case of a bearer debentures the holder thereof can transfer it free from equities between the company and the person to whom it is originally issued and obviates the necessity of any instrument of transfer and is transferable merely by delivery and interest thereon is realizable by the bearer whoever he may be, and as such, this kind of debenture is treated as a negotiable instrument. Any transferee of such a debenture by delivery to him takes it free from any defects to which such a debenture may be subject in the hands of the transferor, provided a transferee acquires it for consideration without notice of any defects, in good faith and for consideration. As already observed, debenture to bearer may be converted at the option of the bearer to registered debenture in case the conditions endorsed thereon provide for the same. In such an event all those privileges and assurances which attach to registered debenture become operative herein also. The advantages which the registered debenture holder possesses are :

(1) His title to such debenture would be recorded in the books of the company and even in the event of loss or destruction of the script (debenture deed or debenture stock certificate) his ownership is assured.

(2) Such title can be verified very easily from the register of holders of such debentures by reference to the company.

(3) The title to such debentures can be very easily proved through the books of the company.

(4) The transferee obtains a good title free from the defects or equities attaching to the original one.

The company can also very well ascertain and reach the owners of such debentures or debenture stocks and can ascertain, without any difficulty, the respective titles of the registered holders. It obviates the necessity for the company to settle the disputes between various transferees and the transferors that are bound to arise during such transfers and those who wish to invest in such debentures can get a clear picture of all the circumstances of the company and its securities. For facility of collection interest due on such debentures, holders thereof sometimes prefer that the interest may be realizable by the bearer of interest coupons and to provide for such a convenience registered debentures or debenture stock are sometimes issued with interest coupons payable to bearer.

As regards the properties of the company which can be subject-matter of security for the debenture-holders, which at one time it was considered doubtful whether the uncalled capital of the company could be made of security, Jessel

M. R. resolved that doubt in 1875¹ by holding that a mortgage of uncalled capital was allowable where the company's articles of association gave power, and there was nothing in the memorandum of association to the contrary. The court of appeal set the matter at rest thereafter in *re Pyle Works*² and the Judicial Committee of the Privy Council affirmed it in *Newton v. The Debenture holders of Anglo-Australian & etc. Company*.³ If the articles of association do not expressly provide for creating a charge on the uncalled capital of the company, the power can be acquired by the company by means of a special resolution.⁴

1. *Re. Phoenix Bessemer Company*, 44 L. J. Ch. 683.

2. 44 Ch. D 534.

3. 1895 A. C 244.

4. *Jackson v. Rainford Coal Co.*, (1896) 2 Ch. 340.

Debentures can also be secured by a charge on or mortgage of a call already made but not yet paid.¹

Certain mortgages and charges to be void if not registered.
See S. 109.

Register of Mortgages and Charges.
See S. 112.

Index of Register of Mortgages and Charges.
See S. 113.

Certificate of Registration.
See Sec. 114.

Endorsement of Certificate of Registration of Debenture or Certificate of Debenture Stock.
See Sec. 115.

Copy of instrument creating mortgage or charge to be kept at registered office.
See Sec. 117.

Registration of Appointment of Receiver.
See Sec. 118.

Filing of Accounts of Receiver.
See Sec. 119.

Payment of certain debts out of assets subject to floating charge in priority to claim under the charges.
See Sec. 129

Under the Indian Companies Act, it is specifically provided that whenever any properties of the company are made a security for the payment of any debt advanced or to be advanced to the company such security must be made manifest so as to apprise all persons dealing with the company to know whether such properties of the company have already been made a security for the payment of any debts due from the company. This is effectuated by the Act whereby every company is required to submit the prescribed particulars of such security together with the copy of the deed creating it within 21 days after the date of its creation and on failure to do so, such a security would be void against any other creditor of the company or if the company is wound up, against its liquidator. In order to protect the creditor in whose favour a security is created by the company, such secured creditor is enabled to furnish the requisite information so that the security created in his favour be safe and available against other creditors as well as the liquidator, as the case may be. A further provision is also made by requiring the company to keep a register of mortgages and charges created by the company and requiring registration as aforesaid and such a register shall be open to inspection by any person on payment of the prescribed fee not exceeding rupee one for each inspection. In the same manner, the Registrar is required to keep a chronological index in the prescribed form and with the prescribed particulars of the mortgages and charges registered with him under the Indian Companies Act. Various other similar provisions are made regarding the issue of certificate of registration granted by the registrar and the endorsement of such certificate on every debenture or certificate of debenture-stock, issued by the company after the security has been so created and for keeping the copy of every instrument creating a mortgage or charge requiring registration at the registered office of the company. In case any secured creditor under a debenture or otherwise is entitled to appoint a receiver of the properties of the company, provision is made for the registration of such appointment and for the submission of accounts by the receiver so appointed. It is also provided that a receiver can pay out to the preferential creditors out of any assets coming to his hands in priority to any claim for principal or interest in respect of debentures. In case any rectification of register of mortgages becomes

1. *Humber Iron Works Company*, 16 W. R., 474, 667; see also *Sankey Brook Coal Co.*, 9 Eq. 721; *Pickering v. Ilfractombe Ry. Co.*, L. R. 3 C. P. 235, 247

Rectification of Register of Mortgages.
See Sec. 120.

Registration of Satisfaction of Mortgages and Charges.
See Sec. 121.

Penalties.
See Sec. 122.

Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.
See Sec. 124

Right to inspect register of debenture holders and to have copy of trust deed.
See Sec. 125.

Perpetual Debentures.
See Sec. 126.

Power to reissue redeemed debentures in certain cases.
See Sec. 127.

Specific performance of contract to subscribe for debentures.
See Sec. 128.

necessary the, Court is empowered to deal with the matter and when any mortgage or charge is redeemed provision is made for registration of satisfaction of such mortgage or charge. To enforce the compliance with the aforesaid various provisions in this behalf, certain penalties are provided. Provision is also made for the inspection of the instruments creating mortgages and charges and the company's register of mortgages as well as for the inspection of register of mortgages as well as for the inspection of register of debenture-holders and of the trust deed, if any. Although a mortgage is always redeemable but sometimes it becomes expedient to issue irredeemable debentures or redeemable only on the happening of a contingency however remote it may be. Accordingly a specific provision has been made validating perpetual debentures. Sometimes it becomes necessary to keep the debentures alive for the purposes of re-issue. Provision is therefore made to cover this point also. Normally an agreement to grant a loan is not enforceable against a creditor but an exception has been made in case of debentures whereby a contract with a company to take up and pay for in debentures of the company is made enforceable by decree for specific performance of such agreement.

For facility of reference, the various statutory provisions relating to the aforementioned matters have been printed below :—

Certain mortgages and charges to be void if not registered.

S. 109 (1) Every mortgage or charge created after the commencement of this Act by a company and being either—

(a) A mortgage or charge for the purpose of securing any issue of debentures ; or

(b) a mortgage or charge on uncalled share capital of the company; or

(c) a mortgage or charge on any immovable property wherever situate, or any interest therein; or

(d) a mortgage or charge or any book debts of the company; or

(e) a mortgage or charge, not being a pledge on any movable property of the company except stock-in-trade ; or

(f) a floating charge on the undertaking or property of the company ; shall, so far as any security on the company's property or undertaking is thereby conferred be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof verified in the prescribed manner and filed with the registrar for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for payment of the money thereby secured and when a mortgage or charge becomes void under this section, the money secured thereby shall immediately become payable ;

Provided that—

(i) in the case of a mortgage or charge created out of British India, comprising solely property situate outside British India, twenty-one days after the date on which the instrument or copy could, in due course of post and if despatched with due diligence, have been received in British India, shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument of copy are to be in filed with the registrar; and

(ii) where the mortgage or charge is created in British India but comprises property outside British India, the instrument creating or purporting to create the mortgage or charge or a copy thereof verified in the prescribed manner may be filed for registration notwithstanding the further proceedings may be necessary to make the mortgage or charge valid or effective according to the law of the country which the property is situate; and

(iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts; and

(iv) the holding of debentures entitling the holder to a charge on immovable property shall not be deemed to be an interest in immovable property.

(2) Where any mortgage or charge on any property of a company required to be registered under this section has been so registered, any person acquiring such property or any part thereof, or any share or interest therein, shall be deemed to have notice of the said mortgage or charge as from the date of such registration.

(In this section 'British India' does not include Burma or Aden, whatever the date of the mortgage or charge in question.)

109A. (1) Where after the commencement of the India Companies (Amendment) Act 1936 (XXII of 1936), a company registered in British India acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribe particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument if any, by which the charge was created or is evidenced, to be delivered to the registrar for registration in manner required by this Act within twenty-one days after the date on which the acquisition is completed :

Registration of charges on properties acquired subject to charge.

Provided that, if the property is situate and the charge was created outside British India, twenty-one days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence have been received in British India shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

(2) If default is made in complying with this section the company and every officer of the company who is knowingly and wilfully in default shall be liable to fine of five hundred rupees.

Particulars in case of series of debentures entitling holders *pari passu*.

S. 110. Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture-holders of that series are entitled *pari passu* is created by a company, it shall be sufficient for the purposes of section 109 if there are filed with the registrar within twenty-one days after the execution of the deed containing the charge or if there is no such deed, after the execution of any debentures of the series the following particulars:—

(a) the total amount secured by the whole series and
 (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined, and
 (c) a general description of the property charged ; and
 (d) the name of the trustees (if any) for the debenture-holders : together with the deed or a copy thereof verified in the prescribed manner containing the charge, or if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register :

Provided that, where more than one issue is made of debentures in the series, there shall be filed with the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

Particulars in case of commission, etc., on debentures. S. 111. Where any commission, allowance or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally, for any debentures of the company or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be filed for registration under section 109 and 110 shall include particulars as to the amount or rate per cent of the commission, discount or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued.

Provided that the deposit of any debentures as security for any debt of the company shall not, for the purposes of this provision, be treated as the issue of the debentures at a discount.

Register of mortgages and charges. S. 112. (1) The registrar shall keep, with respect to each company, a register in the prescribed form of all mortgages and charges created by the company after the commencement of this Act and requiring registration under section 109, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(2) After making the entry required by sub-section (1) the registrar shall return the instrument (if any) or the verified copy thereof, as the case may be, filed in accordance with the provisions of section 109 or section 110 to the person filing the same.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one rupee for each inspection.

Index to register of mortgages and charges. S. 113. The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

Certificate of registration. S. 114. The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of section 109, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of sections 109 to 112 as to registration have been complied with.

Endorsement of certificate of registration on debenture or certificate of debenture stock. S. 115. The company shall cause a copy of every certificate of registration, given under section 114, to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered.

Provided that nothing in this section shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

S. 117. Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under section 109 to be kept at the registered office of the company. **Copy of instrument creating mortgage or charge to be kept at registered office.** Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

S. 118. (1) If any person obtains an order for the appointment of a receiver of the property of a company, or appoints such a receiver under any powers contained in any instrument, he shall, within fifteen days from the date of the order or of the appointment under the powers contained in the instrument, file notice of the fact with the registrar, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges. **Registration of appointment of receiver.**

(2) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

S. 119. (1) Every receiver of the property of a company who has been appointed under the powers contained in any instrument and who has taken possession, shall once in every half-year while he remains in possession, and also on ceasing to act as receiver, file with the registrar an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall, also on ceasing to act as receiver, file with the registrar notice to that effect, and the registrar, shall enter the notice in the register of mortgages and charges. **Filing of accounts of receivers.**

(2) Where a receiver of the property of a company has been appointed every invoice, order for goods, or business letter issued by or on behalf of the company, or the receiver of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.

(3) If default is made in complying with the requirements of this section the company and every director, manager, managing agent, secretary or other officer of the company and every receiver who knowingly and wilfully authorises or permits the default, shall be liable to a fine not exceeding two hundred rupees.

S. 120. (1) The court, on being satisfied that the omission to register a mortgage or charge within the time required by section 109 or that the omission or mis-statement of any particular with respect to any such mortgage or charge, or the omission to give intimation to the registrar of the payment or satisfaction of a debt for which a charge or mortgage was created, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seem to the court just and expedient, order that the time for registration be extended, or as the case may be, that the omission or mis-statement be rectified, and may make such order as to the costs of the application as it thinks fit. **Rectification of register of mortgages.**

(2) Where the court extends the time for the registration of a mortgage or charge, the order shall not prejudice any rights acquired in respect of the property concerned prior to the time when the mortgage or charge is actually registered.

121. (1) It will be the duty of the company to give intimation to the registrar of the payment or satisfaction of any charge or mortgage created by the company and requiring registration under section 109 within twenty-one days from the date of the payment or satisfaction thereof.

Registration or satisfaction of mortgages and charges.

(2) The registrar shall on receipt of such intimation cause a notice to be sent to the mortgagee calling upon him to show cause, within a time (not exceeding fourteen days) to be fixed by such notice, why the payment or satisfaction of the charge or mortgage should not be recorded.

(3) The registrar shall, if no cause is shown order that a memorandum of satisfaction be entered on the register and shall if required furnish the company with a copy thereof.

(4) Where cause is shown, the registrar shall record a note to that effect in the register, and shall inform the company that he has done so.

S. 122. (1) If any company makes default in filing with the registrar for registration the particulars.—
Penalties.

(a) of any mortgage or charge created by the company ; or

(b) of the payment or satisfaction of a debt in respect of which a mortgage or charge has been registered under section 109 or section 109A ; or

(c) of the issues of debentures of a series, requiring registration with the registrar under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every officer of the company or other person who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company, the company, and every officer of the company, who knowingly and wilfully authorises or permits the default shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

(3) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture-stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

S. 124. (1) The copies kept at the registered office of the company in pursuance of section 117 of instruments creating any mortgage or charge requiring registration under this Act with the registrar, and the register of mortgages kept in pursuance of section 123, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one rupee for each inspection, as the company may prescribe.

Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.

(2) If inspection of the said copies or register is refused, the company shall be liable to a fine not exceeding fifty rupees and a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty, and in addition to the above penalty, the court may by order compel an immediate inspection of the copies or register.

S. 125. (1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debenture, subject to any reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(2) A copy of any trust-deed for securing any issue of debentures shall be forwarded to every holder of any such debenture at his request on payment in the case of a printed trust-deed of the sum of one rupee or such less sum as may be prescribed by the company, or, where the trust-deed has not been printed, on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty, and the court may by order compel an immediate inspection of the register.

S. 126. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency however remote, or on the expiration of a period however long.

S. 127. (1) Where either before or after the commencement of this Act a company has redeemed any debentures issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purpose of re-issue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(2) Where with the object of keeping debentures alive for the purpose of re-issue they have either before or after the commencement of this Act, been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(3) Where a company has, either before or after the commencement of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp-duty, but it shall not be so treated for the

purposes of any provision limiting the amount or number of debentures to be issued :

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may given the debenture in evidence in any proceedings for enforcing his security without payment of the stamp-duty or any penalty in respect thereof unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp-duty and penalty.

(5) Nothing in this section shall prejudice.—

(a) the operation of any decree or order of a court of competent jurisdiction pronounced or made before the twenty-fifth day of February, 1910, as between the parties to the proceedings in which the decree or order was made, and any appeal from any such decree or order shall be decided as if this Act had not been passed ; or

(b) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

S. 128. A contract with a company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

Specific performance of contract to subscribe for debentures.

S. 129. (1) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge or possession is taken by or on behalf of those debenture-holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.

(2) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

Form of Resolution of the Company Authorising Directors to Issue Debentures.

RESOLVED that the directors be and they are hereby authorised to raise a sum of Rs. or thereabout not exceeding Rs. by issue of one debenture or a series of debentures ranking *pari passu* and to secure the same by creating a mortgage of the immovable properties of the company and a floating charge over the undertaking, assets, fixtures, stock-in-trade, uncalled capital and other properties of the company and under such terms and conditions as to repayment of principal and interest and execution of such documents, trust deed or other instrument as they shall deem fit.

It is further RESOLVED that directors shall be entitled to authorise any one or more of them to execute the debenture or debentures and such other instruments or deeds as may be required therefor.

It is also further RESOLVED that the directors shall be entitled to convert the debentures into debenture stock and deal with such debenture stock or debentures as they shall deem fit, and issue the same on discount, at par or at premium as the board of directors may resolve in this behalf.

Form for Extending the Powers of the Directors to borrow by issue of Second Series of Debentures.

It is RESOLVED that the directors be and they are hereby authorised to raise a further sum not exceeding Rs. by issue of a second series of debentures to rank *pari passu* but as a second charge next in priority to the debentures issued previously under resolution No. ... dated of the company.

Form of Resolution for Alteration of the Articles of Association of the Company Authorising it to Borrow by issue of Debentures.

That the articles of association of the company be amended and further regulations as regulations x(a) and x(b) be added next after regulation No. x of the articles of association of the company to the following effect :—

x(a) The directors may borrow or secure the repayment of the loan advanced to the company in such manner and on such terms and conditions in all respects as they shall deem fit, and in particular by the issue of a debenture or debentures or debenture stock or by way of mortgage or charge or floating or other security on the undertaking, assets, fixtures, uncalled capital, properties both movable and immovable, stock in trade or part thereof both present and future including the called, but unpaid capital of the company, and its uncalled capital for the time being.

x(b) The company may convert debentures into debenture stock and *vice versa* and the same or other securities given by the company be made assignable free from any equities between the company and the person to whom the same may have been originally issued. Such debenture or debenture stock or other securities may be issued at a discount, at par or at a premium and with any special privileges as to reduction, surrender, drawings, redemption of shares, attending and voting at general meetings of the company appointment of the directors and otherwise as the directors may deem fit.

Form of Resolution of the Company to issue a single Debenture.

It is resolved that a sum of Rs. 10,000/- be borrowed from Mr. Z of and a debenture be issued in his favour securing the repayment of the loan with interest at 6 per cent p. a. with half yearly rests and securing such repayment creation of a floating charge on the undertaking, assets and stock-in-trade and other properties of the company both present and future and including its uncalled capital on such terms and conditions as to repayment and in all other respects as the directors may deem fit.

Form of Resolution of Directors to issue a Single Debenture.

RESOLVED that a sum of Rs. 10,000/- be borrowed from Mr. Z and to secure the repayment thereof with interest by creating floating charge on the assets of the company both present and future including its uncalled capital and creating a specific mortgage on the immovable properties of the company and on such terms and other conditions as may be agreed upon between Mr. Z and a committee of directors comprised of Mr. and Mr. who are authorised to execute the debenture on behalf of the company.

Form of Resolution of Directors to Issue Series of Debentures.

RESOLVED that a series of debentures of the total nominal value of Rs. 50,000 comprised of 500 debentures of Rs. 100 each be issued on such terms

and conditions as to repayment, interest and otherwise on the security of the undertaking, assets both present and future and uncalled capital of the company by way of floating charge thereon in favour of the debenture holders who are all to rank *pari passu* and that the said debentures and trust deed, if any, be signed and executed by Mr.....on behalf of the board of directors acting for the company.

Form of Application for Purchase of Debentures.

**THE NEW TRADING COMPANY LTD.
ISSUE OF DEBENTURES OF Rs. 100/-EACH.**

To

The Directors of the New Trading Company Ltd.,

Gentlemen,

I am sending herewith a sum of Rs. 500/- to cover the cost of 5 debentures of the above issue and to request you to please allot the same to me subject to the conditions and terms resolved upon by the company a copy whereof has been seen by me in the office of the company and initialled by me in the presence of the secretary of the company. I agree to accept the number of debentures mentioned above or any less figure that¹ the directors may deem fit to allot to me.

Yours faithfully,

Name in full.....

Address.....

Occupation.....

Date.....

**Another Form
Application for a Debenture**

**THE NEW TRADING COMPANY LIMITED.
ISSUE OF 500 DEBENTURES OF THE VALUE OF Rs. 100/- EACH
AS PER RESOLUTION OF THE**

COMPANY No. _ _ _ Dated_____.

To

The Directors of the New Trading Co. Ltd.,

Gentlemen,

I have read the resolution of the company aforementioned and agree to purchase 10 debentures of the value of Rs. 100 each and in respect thereof, I am sending a cheque for Rs. 500/- and agree to pay the balance within one month of the demand thereof on being apprised of the allotment of the said or a smaller number of debentures to me as the directors may think fit.

Yours faithfully,

Name in full.....

Address.....

Occupation.....

Date.....

**Form of Agreement between Creditor and the Company in respect
of Loan secured by Debenture**

This AGREEMENT is made the 10th day of April, 1949 between the New Trading Co., Ltd. (hereinafter called “the company” of the one part and Mr AB of..... (hereinafter called “the creditor” of the second part.

WHEREAS the company is desirous to borrow a sum of Rs. 100,000 on the security of its assets and uncalled capital by way of floating charge thereon and

WHEREAS the creditor has agreed to lend the said sum on due execution and delivery of a debenture secured as above and

WHEREAS the terms and conditions to be endorsed on the debenture have been settled between the parties aforesaid, a copy whereof has been delivered, signed by both parties to each of the parties.

NOW this agreement witnesses as under :—

(1) That the creditor agrees to advance the sum of Rs. 100,000 and the company agrees to borrow the said sum on the terms and conditions settled as above and the company agrees to secure the said creditor by issue of a debenture creating a floating charge on the assets (both present and future) and the uncalled capital of the company.

(2) That the said debenture shall be executed and issued within two months of the date of this agreement and the creditor has paid a sum of Rs 10,000 to the company by way of advance and has agreed to pay the balance of Rs 90,000 on the due execution and the delivery of the debenture to him.

IN WITNESS WHEREOF, the parties aforementioned have signed this deed in the presence of

Witnesses.....
.....
.....

Signature of the
Parties.

Form of Debenture Allotment Letter

THE NEW TRADING COMPANY LTD.
ISSUE OF 500 DEBENTURES OF RS. 100 EACH REPAYABLE WITH
INTEREST 6 PER CENT PER ANNUM AS PER RESOLUTION NO
DATED OF THE COMPANY.

Dear Sir,

Pursuant to your application dated.....for allotment of five debentures of the above-mentioned issue, the directors have been pleased to allot to debentures of Rs. 100/- each.

The directors have received Rs.....for in respect of the said debentures from you, the receipt whereof is hereby acknowledged and you are requested to pay the balance of Rs.....per debenture, total Rs.....in respect

of the said five debentures within three months of the date of this allotment letter, on receipt whereof the debentures will be issued to you in due form.

Yours faithfully,
Secretary.

Debenture to Bearer
THE NEW TRADING COMPANY LIMITED

Issue of 100 debentures of Rs. 100 each all ranking *pari passu* repayable on the 1st of July, 1966.

This debenture has been issued pursuant to and in accordance with the resolution of the company No.....dated.....under the terms and conditions mentioned hereunder.

No. of debenture.

Value of debenture. Rs. 100

The New Trading Company Ltd. (hereinafter called the company) undertakes to pay to the bearer of this debenture on the 1st, of July, 1966 or on such earlier date as the principal money hereby secured may become payable, by the conditions of this debenture, the sum of Rs. 100 and until payment of the said sum of Rs. 100/- the company will pay interest thereon at 6 per cent every six months, the first half yearly instalment of interest being payable on the 1st of January 19.....and thereafter on the 1st of July of that year and so on in each year in accordance with the coupons attached herewith.

The company hereby creates a floating charge in favour of the debenture holders on the undertaking, assets (present and future, stock) in trade, and uncalled capital of the company.

The company hereby covenants not to mortgage or create a charge on the aforesaid assets and uncalled capital of the company comprised in this security to rank in priority to or *parsi passu* with the debentures of this series. This debenture is issued subject to the conditions and terms endorsed hereunder.

Debenture No..... (1)

Interest Coupon No..... (2)

Directors

Coupon. The New Trading Co. Ltd.

Half yearly interest for the half year ending.....payable on the 1st of.....of.....at the Registered Office of the company.

Rs.....

Secretary

CONDITIONS ABOVE REFERRED TO

(1) This debenture is one of the series of 100 debentures issued pursuant to and in accordance with the Resolution No.....dated.....of the company for securing the total sum of Rs. 1,00,000 borrowed thereunder.

(2) All the said debentures will be payable *pari passu* and rank equally among themselves and shall be secured by a floating charge on all the undertaking, assets (present and future), stock in trade and uncalled capital of the company.

(3) Annexed to this debenture are.....coupons for payment of half yearly interest on the dates mentioned thereon, which will be paid on presentation of the said coupon or coupons or after the due date at the Registered Office of the company.

(4) The principal sum of Rs. 100 due under this debenture shall be paid on the due date at the registered office of the company.

(5) If the principal sum secured under this debenture is paid by the company on any day earlier than the due date mentioned above, the company shall give notice in writing at least three months prior to the date fixed for such earlier redemption of the debenture, in which event the debenture-holder must surrender all the coupons the interest whereon has not yet been paid as not having accrued due and on such surrender, the company shall pay to the debenture-holder the sum of Rs. 100 plus such interest as may have accrued due till the date of such earlier redemption as mentioned hereunder.

(6) On payment of any interest due under this debenture to the bearer thereof and on payment of the principal sum as and when it accrues due to the bearer thereof, the company shall be deemed to be discharged and the properties and assets of the company hereby secured shall be deemed to be redeemed and free from any encumbrance whatsoever. The company shall not be bound to take notice of any trust or lien effecting this debenture or any coupon.

Form of Registered Debenture.

THE NEW COMPANY LIMITED

Issue of Rs. 50,000 Debentures of Rs. 100 each Payable with Interest at 6 per cent per annum.

No.....

Rs. 100

(1) The New Company Ltd. (hereinafter called "the company") will, on the 30th day of June, 1976 or on such earlier date at which the principal sum secured becomes payable in accordance with the terms and conditions of this debenture, pay to AB of.....or the registered holder of this debenture for the time being, the sum of Rs. 100/-

(2) The company will pay during the currency of this debenture to the registered holder thereof interest on the said principal sum of Rs. 100 at 6 per cent. p. a. by half yearly payments on the 1st January and 1st July in each year, the first of such half yearly payment to be made on the 1st day of January next.

(3) The company hereby secures the payment, in accordance with this debenture, by the creation of a charge on its under-taking and all its assets, property and rights, present and future including its uncalled capital.

(4) This debenture is issued subject to and in accordance with the terms and conditions mentioned overleaf and endorsed hereon which are deemed to be part of this debenture.

IN WITNESS WHEREOF, the company has through the committee of its Directors as per resolution No.....of the company in a meeting held onday of.....executed and sealed this debenture by the seal of the company in the presence of the witnesses named hereunder.

(1)

(1)

(2)

(2)

Witnesses

DIRECTORS

Endorsed conditions :—

(1) This debenture is one of a series of like debentures of the company for securing the principal sum of Rs. 50,000/- divided into 500 debentures of

Rs. 100 each. Each debenture of this series is to rank *pari passu* in point of charge without any preference or priority one over the other and such charge (except in respect of properties specifically mortgaged by the trust deed mentioned below) is to be a floating charge but the company shall not be entitled to create any further charge or mortgage with respect to the property secured hereby under this debenture in favour of any other person ranking in priority to or *pari passu* with the said debentures.

(2) The company shall keep a register of debentures at its registered office wherein shall be incorporated the name, address and particulars of the registered holders and the number of debentures held by each such registered holder. Such register shall be open for inspection to each such registered holder or his nominee or attorney authorised in writing in that behalf.

(3) Subject to the terms and conditions herein provided and subject to any order of any competent court in this behalf, the company will not be bound to enter in the register notice of any trust or other right affecting such debenture in favour of any other person. The registered holder or his legal representative will be deemed to be the only person entitled to the benefit of this debenture.

(4) Every transfer of this debenture must be in writing signed by the registered holder or his legal representative as the case may be. The transfer must be delivered at the registered office of the company with this debenture, duly stamped, giving address and particulars as well as specimen signatures of the transferee. The company shall be entitled to keep the deed of transfer and shall register the name of the transferee in lieu of the transferor in the register aforementioned. The transfer register shall be closed for a fortnight immediately before the day next before the date fixed for payment of interest under this debenture.

(5) In case of a joint registered holders, the principal moneys and interest hereby secured shall be deemed to be owing to them jointly. The principal moneys and interest hereby secured will be paid without regard to any equities, right of set off or cross-claim between the company and the first holder or any intermediate holder hereof and the receipt of the registered holder for the time being for such principal moneys and interest shall be a complete discharge to the company for the same.

(6) The company may pay off this debenture at any time prior to the date originally fixed hereunder for payment of the principal sum provided the company gives six months' notice to the registered holder or his legal representative as the case may be of its intention to so redeem this debenture.

(7) The principal sum hereby secured shall immediately become payable :

(i) If the company makes default in payment of interest as provided hereunder on the due dates and the registered holder hereof serves a notice in writing on the company demanding the principal sum due hereunder, or

(ii) If a receiver or liquidator is appointed with regard to the assets of the company by a competent court, or

(iii) If an order for winding up the company is passed.

(8) In default of payment of interest on the due dates, debenture holders holding $\frac{2}{3}$ rd of the total series of this debenture or the trustees representing the debenture holders of the value of $\frac{2}{3}$ rd amount of the total issue of the debentures may appoint a receiver of the property hereby charged. The said debenture holders or the trustees on their behalf may apply to a competent court to appoint a receiver of the properties charged.

(9) The holders of the debentures of the above issue are and will be entitled *pari passu* to the benefit of, and subject to the provisions contained in, the trust deed dated..... the day.....of and made between the company of the

one Part and Mr. CD and EF of the other Part whereby assets and property of the company were vested in trustees for securing the payment of principal sums and interest payable in respect of the said debentures.

(10) The principal moneys and interest hereby secured will be paid at the registered office of the company or at the.....the Bank Ltd,.....

(1) A notice served on the registered debenture holder at the address notified to the company or by the transferee thereof at the address supplied by him, as the case may be, shall be deemed to be duly served if the same is posted to such address under a pre-paid post and shall be deemed to be served on the day on which such notice usually should reach the addressee.

Trust deed to Support Debenture (Short Form.)

THIS DEBENTURE TRUST DEED is made on the _____ day of _____ between the New Trading Co., Ltd. (hereinafter called "the company") of the one part and KL of _____ and MN of _____ trustees (hereinafter called "the TRUSTEES") of the other part.

WHEREAS the company authorised the directors to issue debentures of the value of Rs. 50,000 divided into 500 debentures of Rs. 100 each to rank *pari passu* under its resolution No. _____ dated _____ to be secured by the mortgage of the immovable properties of the company and by way of floating charge on the undertaking, assets (present and future), stock-in-trade and the uncalled capital of the company, and

WHEREAS the directors have resolved as per resolution of the Board No. _____ dated _____ to issue the debentures under the terms and conditions mentioned hereunder and have authorised Mr. CD and EF directors of the company to execute this trust deed and the debentures therefor in the name of the company and on behalf of the directors thereof, this DEED OF TRUST witnesses as under :—

(1) The company is absolute owner of the immoveable properties mentioned in the schedule attached hereto, and hereby transfers by way of mortgage the said properties in favour of the trustees to secure the payment of all principal moneys and interest at 6 per cent. p. a. with half yearly rests due under the debentures issued by the company as mentioned above.

(2) Upon repayment of all the principal sums with interest secured to the trustees under this deed, the latter shall at the request and cost of the company reconvey the mortgaged properties hereby transferred in favour of the trustees for the benefit of the debenture-holders, and shall duly discharge this security, whereby the floating charge etc. on the properties and assets of the company shall be duly discharged.

(3) The trustees may at the request of the company agree or join in transferring, conveying, or alienating by way of sale, mortgage or lease any immovable properties hereby specifically mortgaged or part thereof as they shall think fit, but the purchase money or the consideration received for any such sale, mortgage or lease or other transfer shall be paid to or received by the trustees who shall after payment thereof and all the costs and expenses of such transfer invest the amounts so received as provided in the Indian Trust Act and such investment shall be held by the trustees as part of the security for the benefit of the debenture-holders provided, however, that the interest received in respect of such investments shall be paid to the company until the principal moneys secured by the debentures shall have become payable according to the terms and conditions endorsed on the said debentures. The company shall not without the consent in writing of the trustees, lease out its immovable properties in favour of any other person.

(4) The power of appointing new trustees of this deed shall be vested in the company subject to the consent in writing of the surviving trustee acting under this deed.

In witness whereof, the parties aforementioned have signed this deed under their respective hands.

Schedule attached to the DEED OF TRUST.

Properties mortgaged :—(1) Immovable properties.....

(2) Short description of other assets whereon floating charge is created.....

Another Form of Debenture Trust Deed.

This deed of trust is made the.....day of.....between the New Trading Company Limited (hereinafter called "The Company"), of the one part, and Mr. K. L. of..... and Mr. M. N. of..... (hereinafter called "The Trustees") of the other part. Whereas the company has resolved to issue a series of debentures as per Resolution No..... of the company dated.....wherby Mr. and Mr. have been authorized to sign, and execute the said series of debentures and whereas one of the conditions of the said issue is that the company shall execute a trust deed in the terms herein mentioned for the benefit of the debenture-holders.

NOW IT HAS BEEN MUTALLY AGREED AND DECLARED AS UNDER :—

1. The marginal note hereto shall not be deemed to restrict the operation of the subject matter in the clauses hereinafter mentioned.

"The Debentures" means the debenture of the above mentioned series issued by the company under the Resolution of the company mentioned above and shall include the debentures issued as above or re-issued redeemed debentures as provided in Section 127 of the Indian Companies Act.

"The Trustees" mean the present trustees aforementioned or the survivor of them or other trustees or trustee for the time being appointed therefor.

"The Debentures Holder" mean the holders for the time being of the debentures and include joint debenture-holders subject to the rights appertaining thereto under the trust deed.

"The register of Debentures Holders" means the register of debentures holders kept by the company in respect of the said issue of debentures.

"The mortgaged premises" means and includes the properties of the company specifically mortgaged and unless there is something in the contract to the contrary shall include the general assets of the company.

Words importing the singular and the masculine gender shall include plural and feminine gender respectively as the case may be and *vice versa*.

2. The company hereby acknowledges that it is indebted to the trustees in the sum of Rs. 50,000/- with interest thereon at the rate of Rs. 6/- per cent. per annum. The interest is payable on the first of January and first of July every year, the first payment of interest to be made on the first of January next ensuing.

3. The company hereby declares that it is the absolute and beneficial owner of the mortgaged promises more particularly described in the Schedule attached hereto and is entitled to convey the same under the conditions and terms mentioned in

this deed of trust in favour of the said trustees and said mortgaged premises are free from encumbrance or charge of any kind whatsoever.

4. The company as beneficial owner hereby conveys and transfers by way of mortgage all that immovable properties, houses, buildings, godowns and other structure together with land thereunder or appertaining thereto owned and possessed by the company, more particularly described in the Schedule attached hereto in favour of the trustees and the company also hereby charges or secures by way of floating charge all the stocks in trade, assets, undertaking, fixtures, book debts, uncalled capital, rights and privileges belonging to the company or in the disposition of the company in favour of the said trustees for the benefit of the debenture-holders. The company also hereby conveys and transfers by way of mortgage all such immovable properties as may be acquired by the company during the continuance of this trust deed and the company hereby charges or creates a floating charge on all the other assets which may be hereafter acquired by the company in course of business.

5. The debentures may be issued to such persons and on such terms and either at par or at discount or at premium as the company shall determine and to rank as mortgaged debentures as to the mortgaged premises and as a floating charge on the undertaking

Terms of Issue. and other assets of the company. The company shall not, without the consent of the trustees, issue any other series of debentures creating any mortgage or charge or other lien on the entire mortgaged premises inclusive of its other assets, ranking in priority to or *pari passu* with this deed. The company may carry on its business as heretofore and deal with its properties by way of sale, mortgage, lease or otherwise which are for the time being subject to the floating charge in favour of the trustees as herein-before mentioned.

6. The security created under this deed shall become enforceable by and at the instance of the trustees for the benefit of the debenture-holders in each and every of the events herein below mentioned :

Events when the security is enforce-
able. (1) If the company shall make default in payment of six monthly interest as it accrues due from time to time and before the payment of such interest the trustees call in the principal sums under the said debentures by notice in writing to the company ;

(2) If the company ceases to carry on business or threatens to cease to carry on the same ;

(3) If a resolution is duly passed for the winding up of the company or if an order for winding up a company is made by a competent court ;

(4) If a receiver is appointed of the undertaking or other assets of the company inclusive of the mortgaged premises either by court or any other competent authority or person ;

(5) If the properties of the company are attached under a decree or order of court, and the said decree or order is not satisfied within one month of such attachment ;

(6) If the company shall commit a breach of any other covenant or stipulation hereinafter mentioned or fails to remedy the breach within one month next after notice from the trustees is served on the company requiring it to perform its obligations under the terms and conditions mentioned in this deed ;

7. If the company shall make any alteration in the provisions of its memorandum or articles of association which in the opinion of trustees, is prejudicial or detrimental to the interests of the debenture-holders and the company

omits to rectify such alterations as required by the trustees in writing within a month or such further period as the trustees may allow in this behalf by notice, in writing to the company.

8, Except in cases mentioned in sub-clauses 3 and 4 of clause 6 above the trustees shall not enforce the security unless a notice intimating such proposed enforcement thereof is served on the company in writing beforehand provided always that if the trustees are of opinion that delay may injure the interests of the debenture-holders, then this restriction, as to the period of notice or the service thereof shall not apply in that event.

9. The company hereby covenats with the trustees as under :

Covenants

(1) It shall carry on and conduct the business of the company in a proper and business like manner.

(2) It shall keep proper books of account and maintain up-to-date all such books and stock register and other registers as may enable the trustees on inspection to find out the financial position of the company and its stocks, rights and liabilities and shall allow trustees or any nominee in writing of the trustees to examine such books and registers at the registered office of the company and shall give to the trustees or such nominee such informations as may be required relating to the affairs of the company.

(3) It shall maintain and keep in a proper state of repairs all immovable properties, fixtures, machinery, plant and shall take proper care of the other assets of the company.

(4) It shall insure the mortgaged premises and keep insured such of the properties as are of an insurable nature against loss and damage to the extent of the value of such assets and shall produce for inspection of the trustees such documents as shall show that such insurance has been effected and in default thereof the trustees may at the expense of the company insure the mortgaged premises and recover such premia which shall also be deemed to be secured by the mortgaged premises and shall be recoverable also as if based on a distinct cause of action.

(5) That it shall pay over or cause to be paid to the trustees all such moneys as may be received by the company by sale of any of the mortgaged premises (except the assets over which the trustees have only a floating charge as herein before mentioned).

Powers of the trustees under debenture trust deed to concur with the company in certain acts.

10. The trustees may on the application and at the expense of the company concur with the company in the following acts with respect to the properties specifically mortgaged or whereon floating charge has been created by the company under the debentures trust deed :

(1) The whole or part of the properties specifically mortgaged may be allowed to be sold for a sum to be received either at one time or in instalments or under any other arrangement approved by the trustees.

(2) The properties specifically mortgaged may be allowed to be let either apart from or with the undertaking of the company to any person for a period agreed to, and at a premium and or rent fixed therefor with the consent of the trustees. Any other property may be acquired with the proceeds of the sale of the mortgaged properties as aforementioned or out of the premium or rent received provided that properties so acquired shall be deemed to be mortgaged under the same terms and conditions as the property originally mortgaged for the benefit of the debenture holders.

(3) The properties specifically mortgaged may be exchanged for any other property, subject to the condition that the property so obtained in exchange shall

be the security, for the benefit of the debenture holders in lieu of or in substitution for the property given in exchange. The undertaking and other assets of the company wherein a floating charge has been created under the debenture trust deed may be allowed to be mortgaged either by way of a further floating charge or specifically in favour of any creditor or debenture holder of a new or second series to rank in priority to the debenture holders for whose benefit this debenture trust deed has been executed provided that 3/4th of the owners of debentures in respect of this deed have agreed in a meeting convened for that purpose.

(4) Any of the terms and conditions under this debenture trust deed may be modified, altered or added to or deleted with the consent of 3/4th majority of the debenture-holders.

(5) Properties specifically mortgaged may be placed under the control or in the name of any nominees of the trustees for the realisation of the said properties or otherwise. Any of the properties specifically mortgaged may be released in favour of the company provided other property of equal value is mortgaged with the trustees in lieu of the property so released. Any instrument, document or agreement may be executed which may be beneficial or useful for the debenture-holders.

11. (1) Appointment of Receiver. The trustees may at any time after the security hereby constituted becomes enforceable, by writing appoint a receiver of the mortgaged properties or any part thereof and remove any receiver so appointed and appoint another in his stead and such receiver will be invested with the same powers and duties as are usually conferred on or implied in a receiver appointed by court under the Civil Procedure Code. Such a receiver, however, shall obey all lawful directions issued by the trustees to him from time to time. The trustees may fix a remuneration for the receiver to be paid out of the properties under his control. The receiver shall be deemed to be the agent of the company of whose property he was appointed a receiver by the trustees and shall pay over all the proceeds after deducting lawful charges of the realisation, to the trustees. The receiver shall, however, be bound to hand over possession of the property to the trustees if they shall so direct in writing to the receiver and the trustees may manage the said properties themselves or may appoint the same or any other person as receiver of the whole or part of the said properties.

(2) **Borrowing by the trustees.** The trustees may borrow any sum or sums with or without security or by creating a mortgage or charge on the properties under their control and specifically mortgaged to them under the debenture trust deed for the purpose of paying off or discharging any mortgage or charge for the time being charged on the properties specifically mortgaged under the debenture trust deed in priority to this deed and for the purpose of defraying any costs of management, preservation or protection of the mortgaged properties and may agree to pay such interest on the loans so raised from time to time as they may deem fit. Such charge or mortgage so created by the trustees shall be paid off in priority to any other claim on the mortgaged properties.

12. A meeting of debenture-holders duly convened and held in accordance with the provisions of this deed shall have power by an extraordinary resolution passed by 3/4th majority of the debenture holder present in person or by proxy to do all or any of the following things :—

(1) To permit the trustees to sell the properties specifically mortgaged or part thereof.

(2) To allow the trustees to enter into a transaction of exchange with respect to the properties specifically mortgaged for any other property to be substituted as security for the same.

(3) To sanction the release by the trustees of any of the properties of the company specifically mortgaged and in substitution therefor to accept any other property of the company as security whether specifically mortgaged or otherwise; and may permit the trustees to assent to any modifications of the terms and conditions of the debenture trust deed so as not to prejudice the rights of the debenture holders.

(4) To authorise the trustees to appoint a receiver of the properties specifically mortgaged whenever it is just or convenient to do so.

(5) To require the trustees to enforce any of the terms and conditions on the part of the company.

13. (1) A meeting of the debenture holders may be called by the—

Meetings of the debenture holders, who may call the meeting. (a) trustees for the debenture holders, or at the request of owners of 1/10th of the total issue of debentures of the same series,

(b) company, and

(c) debenture holders owning more than 1/10th of the debentures of the same series and ranking *pari passu*, in case the trustees, if any, omit or refuse to call a meeting within 7 days of the requisition thereof by such debenture holders.

(2) Notice of the meeting of the debenture holders called in any of the aforementioned cases shall be sent by the trustees or the company or the requisitionists as the case may be, specifying the place, day and the hour of the meeting and shall be served on the debenture holders after the expiry of at least seven clear days. The notice shall be deemed to be so served if it is posted to the registered address of the debenture holder under prepaid registered post and shall be deemed to have reached the addressee on the day on which in due course of post it should reach him. The notice shall indicate the business to be transacted or the matter to be discussed and dealt with at such meeting. Such notice shall also be advertised in a newspaper circulating in the area wherein the largest number of debenture holders reside or carry on business and it shall be deemed to have reached the debenture holder on the day next after the issue of such paper.

(3) Debenture holders holding 1/10th of the nominal amount of the total number of debentures issued of that series shall form a quorum for the transaction of business at any such meeting and no business shall be transacted at any meeting unless the requisite quorum be present at the commencement and during the continuance of meeting. The debenture holder at any such meeting may be represented by a proxy which shall be included in the quorum above-mentioned.

(4) The trustee first named in the deed of trust or the next senior-most trustee if present, shall preside at every such meeting and if no trustee is present any person nominated by the trustees may preside or if at any meeting the person nominated shall not be present within 15 minutes after the time appointed for the holding of the meeting, the persons present shall choose one of their number to be the chairman of their meeting.

(5) It shall be lawful for the trustees and the directors to attend at the meeting and if permitted by the chairman to address the meeting but they shall not have any right to vote therein. The solicitors of the trustees or of the company or the secretary of the company may also attend such meeting.

(6) If within half an hour of the time appointed for the meeting of the debenture holders, a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place and if the quorum is not still present at the adjourned meeting, the meeting shall stand dissolved.

or

(If the quorum is not present within half an hour of the time fixed for the meeting, persons present shall form a quorum and the business transacted at such meeting shall be deemed to be valid in all respects as if the requisite quorum was present).

(7) Every resolution moved in the meeting shall be decided by a show of hands, and in case of equality of votes, the chairman shall have a casting vote. The declaration by the chairman of the result of the voting shall be conclusive but the chairman may or on requisition of persons holding debentures of the value of 1/20th of the total issue of that series a poll may be taken either at the same meeting or after an interval or at an adjournment of the said meeting and the result of such poll shall be deemed to be the result of the meeting at which a poll was demanded.

(8) The chairman may with the consent of any such meeting adjourn the meeting from time to time and if necessary from place to place.

(9) Every debenture holder or in the case of joint holders the one whose name stands first on the register as one of the holders thereof shall be entitled to exercise one vote for each debenture and it may either be exercised in person or by proxy and any such instrument of proxy shall be in writing signed by the appointer or sealed as the case may be and must be delivered to the chairman at least 24 hours before the time fixed for the holding of the meeting.

14. A general meeting of the debenture holders shall have the following powers, exercisable by extra-ordinary resolution, namely :—

(a) authority to sanction the surrender or release of any of the mortgaged premises,

(b) authority to sanction any compromise or arrangement proposed by the company and the debenture holder,

(c) authority to effect any modification in the conditions and terms in the debentures if proposed by the company and assented to by the trustees as being necessary or proper for carrying out any transaction so authorised by the extra-ordinary resolution.

(d) authority to modify the rights of any debenture holders against the company or against the property charged or secured in the debentures provided it is not prejudicial to the interest of the company or to the rights of the trustees.

15. An extra ordinary resolution passed at a meeting of debenture holders duly convened shall be binding on all debenture holders whether present or not present at any such meeting and each debenture holder shall be bound to give effect thereto and the passing of any such resolution shall be conclusive evidence that the circumstances existing at the time of the meeting justified the passing thereof.

16. The expression "extra-ordinary resolution" herein means a resolution passed at a meeting of the debenture holders duly convened and held in accordance with the aforementioned provision if passed by a majority consisting of not less than 3/4th of the debenture holders voting thereat upon a show of hands and if a poll is duly

demandd then by majority consisting of not less than 3/4th of the votes given on such poll.

17. Minutes of all resolutions and proceedings of the meetings of debenture holders shall be duly entered in the books to be provided by the company for such purpose or by the trustees at the expense of the company and any such minute as aforesaid if purporting to be signed by the chairman of the meeting at which such a resolution was passed shall be conclusive evidence of the matters contained therein unless the correctness thereof is conclusively challenged in a court of law.

18. The trustees shall not be liable to account as mortgagees in possession or in any thing except for actual receipts or be liable for any loss upon realisation or for any default or omission for which a mortgagee in possession might be liable. The trustees may whenever they deem fit or expedient delegate to any one of the them or to any other person all or any of the trust powers and discretions vested in trustees provided that 3/4th of the debenture holders issued under the series may object to the nomination of a particular person by the trustees and on such objection being forwarded to the trustees in writing such delegation of the trustee's power to the nominee shall be deemed to become void.

19. During the continuance of this security, the trustees shall have access to books, accounts and papers of the company at all reasonable times and shall be entitled to inspect any godowns or other properties of the company and may require any information regarding the activities of the company. The trustees shall also be entitled to appoint an accountant or other person to inspect and investigate into the affairs of the company and the company shall give all facilities for such inspection and investigation and shall pay all costs, charges and expenses of or incident to such an investigation.

20. The trustees may at any time apply to the court for directions in respect of any matter arising during the continuance of the trust deed and shall be indemnified out of the assets of the company of the expenses so incurred by them unless directed otherwise by the court.

21. The trustees shall be remunerated by payment of Rs. 100 per mensem for each trustee and shall also be entitled to charge any travelling or other expenses which they may have actually incurred on behalf of or for the benefit of the company.

22. The trustees may for the due administration of the security vested in them on behalf of the debenture holders act personally or through agents and seek such legal advice as they think fit and shall be entitled to be reimbursed out of the assets of the company in respect of expenses so incurred by them and shall be entitled to be indemnified out of the mortgaged premises or assets charged under the debenture deed in respect of liability and expenses incurred by them in the execution or purported execution of the trust hereof or of any powers, authorities or discretions vested in them pursuant to this trust deed including liabilities and expenses consequent on any mistake, oversight, error of judgment.....or want of prudence on the part of trustees or any person appointed by them to act on behalf of the trustees and the trustees may retain and pay out of any monies in their hands all sums necessary to effect such indemnity.

23. A trustee may resign by sending notice in writing to the other trustees and the company of his intention so to resign and on the expiration of one month from the date of his resignation the trustee shall be deemed to have been relieved of the duties of the trustee and shall not be liable for any loss or injury

caused to the rights of the debenture-holders or of the company by any act done subsequent to the date of his resignation. He shall not be liable for any costs occasioned by such resignation nor is he bound to give any reasons for any such resignation.

CHAPTER VIII

DISSOLUTION

Winding Up of a Company

Modes of winding up. The winding up of a company may be either—

- (i) by the Court ; or
- (ii) voluntary ; or
- (iii) subject to the supervision of the Court.

The winding up of a company by the Court is also known as compulsory liquidation. The Court is defined under the Indian Companies Act as the Court having jurisdiction under this Act, and for the purposes of winding up, the High Court, having jurisdiction in the place at which the registered office of the company is situated, shall be deemed to be such a Court. The objects of a winding up of a company are to bring the operations of a company to a close, realizing its assets and distributing the proceeds among its creditors in due course of administration, and among its contributories in accordance with their rights and interests. The liquidation proceedings in a compulsory winding up are conducted by a liquidator appointed by the Court.

In a voluntary winding up, the liquidation proceedings are conducted by a voluntary liquidator appointed by a resolution, usually special or extraordinary, by the members of the company or some times in conjunction with the creditors of the company as shall be described hereafter.

In a voluntary winding up subject to the supervision of the Court, liquidation proceedings are conducted by the voluntary liquidator when the court, on a special or extraordinary resolution passed by the company to wind up voluntarily, makes an order that voluntary winding up shall continue but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

WINDING UP BY COURT

A private company may be wound up by the Court in the following cases :—

(1) If the company has by special resolution resolved that the company be wound up by the Court. A resolution shall be a special resolution, when it has been passed by a majority of not less than $\frac{3}{4}$ ths of the members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which not less than 21 days' notice specifying the intention to propose the resolution as a special resolution has been duly given : provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

Special resolution to wind up. It is not usual, however, for a company to pass a special resolution for the winding up by the Court as the members usually prefer a voluntary winding up, if they are agreeable to pass a resolution for winding up with that majority.

For facility of reference, section 162 of the Indian Companies Act is voted in extenso :—

Winding up by Court.

Circumstances in which company may be wound up by Court. S. 162. A company may be wound up by the Court—

- (i) if the company has by special resolution resolved that the company be wound up by the Court,
- (ii) if default is made in filing the statutory report or in holding the statutory meeting,
- (iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year ;
- (iv) if the number of members is reduced, in the case of a private company, below two or, in the case of any other company, below seven ;
- (v) if the company is unable to pay its debts ;
- (vi) if the Court is of opinion that it is just and equitable that the company should be wound up.

If the company does not commence its business within a year from its incorporation, or suspends its business for a whole year, the Court is not bound to wind up the company when a petition is presented based on this ground.

Non-commencement of business. If the delay in commencing business is sufficiently accounted for and there appears to be a reasonable prospect that the company, if allowed to go on, may succeed or if a great majority of the members of the company desire to carry on the business of the company, the Court may refuse to wind it up.¹ Business does not mean formal business like allotting shares but means that the company must actually set to work.² But the Court may order the winding up of the company if no satisfactory explanation is forthcoming even though the company may have purchased large properties and may have no debts³. Similarly if the majority of members unreasonably refuse to pass a resolution for voluntarily winding up although the company had not commenced business, the Court may order the company to be wound up under this clause.⁴

As regards suspension of business, for a whole year, the Court must be satisfied that there has been an intention on the part of the company to abandon its business or it appears that the company is unable to carry it on.⁵ Thus where there has been a suspension of business, the power of the Court to wind up the company will be exercised only when there is a fair indication that there is no intention to carry on the business ; if the suspension is satisfactorily accounted for and appears to be due to temporary causes, the order for winding up may be refused.⁶ So long as the company carries on any of its several objects, the Court may refuse to wind it up on the above-mentioned ground.⁷ Where a company has been formed with more than one object, to abandon some of the purposes for which it was formed is not tantamount to ceasing to carry on business provided the principal object is not abandoned.⁸ It may be noted that when a company is amalgamated with another

1. *Metropolitan Rly. Warehousing Co.*, 36 L. J. Ch. 827; *Petersburg etc. Gas Co.*, (1874) W.N. 196; See also *In re Capital Fire Ins. Asscn.*, 21 Ch. D. 209.

2. *In re South Luipaard's V Lie Gold Mines Ltd.*, (1897) 13 T.L.R. 504.

3. *In re Tumacacori Mining Co.*, 17 Eq. 534.

4. See *In re Caementum Co., Ltd.*, (1903) W.N. 257; *Re Tumacacori Mining Co.*, (1874) 17 Eq. 534.

5. *Re. Tomlin Patent Horse Shoe Co.*, 55 L.T. 314; *Middlesborough Assembly Rooms Co.*, 14 Ch. D. 104

6. *Muralidhar Roy v. The Bengal Steamship Co. Ltd.*? (1921) 47 Cal. 654.

7. *In re Norwegian Titanic Iron Co.*, 35 Beav. 223. *In re H. H. Vivian & Co.*, (1900) 2 Ch. 654; *In re. Langham Skating Rink Co.*, 5 Ch. D. 669. See also *Oriental Navigation Co. v. Dhanaram Agarwala*, 49 Cal. 399.

8. *Thellusson v. Valentia*, (1907) 2 Ch. 1.

company whether by sale of its undertaking to other company or otherwise and thus becomes a holding company, it shall not be deemed to have ceased to carry on business.¹

A company shall be deemed to be unable to pay its debts ;

(i) If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding Rs. 500/- then due has served on the company by causing the same to be delivered by registered post or otherwise at its registered office, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the same or to secure or compound for it to the reasonable satisfaction of the creditor; or

(ii) if execution or other process issued on a decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(iii) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

(2) The demand referred to above shall be deemed to have been duly given under the hand of the creditor if it is signed by an agent or legal advisor duly authorised on his behalf or in the case of a firm if it is signed by the said agent or by a legal advisor or any one member of the firm on behalf of the firm.² S. 163

In order to find out whether a company is unable to pay its debts, the Court must see whether the company is commercially insolvent, *i. e.*, whether it is unable to meet its current demands although the assets when realised including uncalled capital exceed its liabilities. As observed by Lord Wrenbury : " In such a case it is useless to say that if the assets of the company are realised there will be ample to pay 20 shillings in the pound; this is not the test. A company may be at the same time insolvent and wealthy. It may have wealth locked up in investment not presently realisable but although this be so, yet if it has no assets available to meet its current liabilities, it is commercially insolvent and may be wound up".³ One cannot, however, ignore the uncalled capital of the company which must be taken into account.⁴ What has to be ascertained is not whether the company if it converted all its assets into cash would be able to discharge its debts but whether in a commercial sense, the company is solvent. The company is entitled to regard the money which it is entitled to call up on account of shares from the contributories as money available for the discharge of its debts.⁵ Hence one must take into account the existing and prospective assets on the one hand and the existing, contingent and prospective liabilities on the other.⁶

When a creditor serves a statutory notice as provided in section 163 of the Indian Companies Act on the company and company without any just cause fails or neglects to pay the demand or to square up or compound for it to the reasonable satisfaction of the creditor, the latter is *ex debito justitiae* entitled to a winding

1. In re National Finance Co., (1866) 14 L.T. 749.

2. See Section 163 of the Indian Companies Act.

3. Buckley, Company Law p. 365, quoted in re. Punjab Flying Club, A. I. R. 1933 L. 301. See also Re. Gold Hill Mines, 23 Ch. D. 210.

4. In re Bradford Tramway Co., 4 Ch. D. 18, provided the shareholders are not themselves insolvent.

5. Sudhyanath v. Bihar National Ins. Co. Ltd., I. L. R. 20 Pat. 538.

6. In re. European Life Assurance Society, L. R. 9 Eq. 122.

up order. If, however, there is a *bona fide* dispute about the liability of the company in respect of the demand made by the creditor non-payment of such a debt cannot be treated, as amounting to "neglect" within the meaning of that section. This word has been construed by the Courts to mean omission without any reasonable cause.¹ Courts will never allow creditors of the company to invoke the assistance of the Companies Act for getting payment of their debts. If there is genuine dispute with regard to the debt, then the creditors of the company must be referred to suit.² The Courts in such a case consider that the petition for winding up is abuse of the process of the Court. Jessel, M. R., made the following observations in *re Imperial Hydropathic Hotel Co* :³

"The rule is, no doubt, that when the debt is undisputed and is of sufficient amount, then he has a right to obtain payment by winding up petition, if he has given a statutory notice. Then we have to consider what is the meaning of a debt being undisputed. As I have said in this case, there was no reasonable excuse for refusing to pay this debt or neglecting to pay it; but was there under a mistake in law, a *bona fide* dispute, something which should have prevented him from presenting the winding up petition? I do not think there was. I have looked through the correspondence and I must say I have come to the conclusion that the writers of the letters on the part of those who dispute the claim of Mr. Batty had no clear idea of their position. They stated in one letter one thing, and in another letter another, but none of the letters appear to me to amount to this; 'We dispute your debt on any one of these grounds' They said in one letter, 'You did not lend it to our clients.' In another letter, 'We have received no notice of your claim and cannot admit any claim against these persons without evidence in support of it.' Then they ask for particulars, but, when we come to the facts, we find this, that the creditor knew that they had a balance-sheet with his name in it and with the amount in; that they had paid him interest in April, receiving this demand in May for £ 500/- from the very people and of course he would naturally think they were trifling with him and that they knew the particulars. Besides that, he tells them this, and I think he might reasonably believe that they were playing with him. That is the view I take of the correspondence, and I am by no means unprepared to say this that if they had put all those shadowy claims together in a letter, in the most distinct terms, the creditor would still have been entitled to think, to use a common phrase, making game of him that they could not be serious in such a line of defence. Then he is entitled to say, 'My claim is not *bona fide* disputed. You are amusing yourselves by weaving some cob-webs: but you do not intend to pay and you know that this is nonsense, and that it is a mere excuse for nonpayment or for obtaining delay. It is not because a man says 'I dispute the debt' that makes it a disputed debt. He must give some reasonable ground and if he writes a series of nonsensical propositions it appears to me the creditors is entitled to say: 'You are merely amusing yourself by trying to put me off with vague and frivolous excuses, you do not see any ground to dispute it in law.' It appears to me that this was not a case for which the creditor had notice of a *bona fide* dispute as to his debt, which would compel him to refrain from attempting to recover payment of what is really an undisputed debt, an undefended demand, by means of a winding up petition, and the result is, in my opinion, that he is entitled to succeed."

1. See *In re Imperial Hydropathic Hotel Company*, 41 L. T. 147; *Tikamchand v. Harish chandra*, 1 L. R. 10 L. 80; *In re London & Suburban Bank*, (1870) 6 Ch. App. 641. Even when the debt is disputed *bona fide* by the company, a winding up order will be made if the petitioners would be left without a remedy, *In re Russian & English Bank*, (1932) 1 Ch. 663.

2. *Doraiswami Iyer v. Coimbatore, etc., Ltd.*, A. I. R. 1929 Mad. 265; see also *Tulshidass Lallubhai v. Bharatkhand Cotton Mills*, 1 L. R. 39 Bom. 47; *Satyarazu v. Guntoor Mill*, 48 Mad. 267, *In re London & Paris Banking Corpn.*, L. R. 19 Eq. 444.

3. 41 L. T. 147 at 149.

Lastly the company may be wound up by Court if the Court is of opinion that it is just and equitable that the company should be wound up. At first, the courts held that this clause should be interpreted *ejusdem generis* with the clauses mentioned above in accordance with which a company could be wound up by Court. In 1924, however, Lord Shaw declared in *Loch v. John Blackwood Ltd.*¹ that the *ejusdem generis* doctrine did not operate so as to confine the case of winding up to those strictly analogous to the clauses mentioned above. The expression "just and equitable", therefore is not confined to the cases that could be covered by the aforementioned clauses under which the Court can compulsorily wind up the company and the decided cases show that the court has exercised its jurisdiction to wind up the company in the following kinds of cases :—

(1) Where the managing director of a company could out vote the minority and retain the profits between the members of his family thereby diminishing the dividend payable to the minority and committed other irregularities,² or where some shareholders whose conduct requires investigation, by reason of majority of votes held by them prevent the necessary resolution for winding up being passed, the Court has exercised its discretion for winding up the company.

(2) Where the company is unable to carry on the business on account of the loss of the machinery or the main asset or the p or lessee-rights or in any other manner its primary o fails, the Court is entitled to wind up the company under this clause.⁴

(3) Where there is a deadlock in the management of the company.⁵

(4) Where the company is a mushroom or bubble company carrying on business which is illegal or the company was formed on the footing that it never really meant to carry on business *bona fide*.⁶

(5) Where there has been fraud in the promotion of the company demanding investigation into its affairs.⁷

(6) Where there is a justifiable lack of confidence in the conduct and management of the company owing to the defalcation or misappropriation of funds or dishonesty directors.⁸

1. 1924 A. C. 783 ; *David v. Brunswick*, A. I. R. 1936 A. C. 114 ; *Cine Industries & Records Co. Ltd.*, A. I. R. 1942 Bom. 231.

2. *Sabapathy v. Sabapathy*, 48 Mad. 448 ; *Tomson B. Drysdale*, 1925 S. C. 311, father ousting the son in a private company.

3. *Mulla & Sons v. Chartered Bk. of India, Australia and China*, 5 Rang. 685 ; *In re Vanetis Ltd.*, (1893) 2 Ch. 235.

4. *Suburban Hotel Co.*, (1867) 2 Ch. 737 ; *Haven Gold Mining Co.*, (1881) 20 Ch. D. 151 ; *Redrock Gold Mining Co.*, (1889) 61 L. T. 785 ; *Tomas Edward Brinsmad*, (1897) 1 Ch. 406 ; *Standard Aluminium Brass Works Ltd.*, A. I. R. 1929 Bom. 8 ; *Bleriot Mfg. Aircraft Co.*, (1916) 32 T. L. R. 253 ; *Cotman v. Brougham*, (1918) A. C. 514.

5. *In re Yenidige Tobacco Co*, (1916) 2 Ch. 426. *American Pioneer Leather Co.*, (1918) 1 Ch. 556 ; *In re. Mumtaz Bank Ltd*, 13 Lah. 653.

6. *Anglo-Greek Steam Co.*, 2 Eq. 6 ; *London & Cong Coal Co*, 3 Eq. 355. *In re National Debenture and Assets Corporation*, (1891) 2 Ch. 505 ; *Universal Mutual etc. Assurance Ltd, v. Thhopa Naidu*, 56 Mad. 26.

7. *Diamond Fuel Co.*, 13 Ch. D. 400.

8. *Murray & Co.*, A. I. R. 1937 Oudh 377, *Loch v. John Blackwood Ltd*, (1924) A. C. 783.

Grounds akin to dissolving partnership. (7) Where in a private company grounds exist which would justify the dissolution of partnership.¹

VOLUNTARY WINDING UP

Voluntary winding up is of two kinds, *viz.*,

- (1) Members' voluntary winding up, and
- (2) Creditors' voluntary winding up.

If the company is solvent but winding up is desired for one reason or the other, recourse is had to the procedure prescribed for members' voluntary winding up. If, however, the company is insolvent, in that event the creditors are vitally interested and they have some say in the matter as regards the winding up of the company. Section 203 prescribes the circumstances in which a company may be wound up voluntarily. It runs as under—

S. 203. A company may be wound up voluntarily—

(1) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

(2) if the company resolves by special resolution that the company be wound up voluntarily;

(3) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up ;

and the expression 'resolution for voluntarily winding up' when used hereafter in this part means a resolution passed under clause (1), clause (2) or clause (3) of this section.

It shall be noticed that if the company by reason of its liabilities cannot continue its business and it is considered advisable to wind up, it requires an extraordinary resolution of the company as provided in section 81 of the Indian Companies Act for the purpose of voluntarily winding it up, otherwise a special resolution is necessary in other cases. No reasons need be prescribed or mentioned for a voluntary winding up, but the special resolution must be a valid special resolution passed at a meeting which is properly convened and at which the quorum prescribed is present after due notice as mentioned in section 81 of the Indian Companies Act has been sent unless, of course all the members of the company agree to dispense with the notice in writing as prescribed.

Commencement of voluntary winding up. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up (S. 204).

The commencement of a voluntary winding up does not operate as a stay of proceedings pending against the company nor is any leave necessary for new proceedings to be commenced against the company. It merely prevents the directors to carry on business or to act for the company

Effect of voluntary winding up. and they cease to function. The voluntary liquidator acts on behalf of the company thereafter. If a voluntary winding up is followed by compulsory winding up, the winding up shall be deemed to commence, as for example, if preferential payments are to be made by the liquidator under section 230 of the Indian Companies Act, from the date

1. *Yenidje Tobacco Co.*, (1916) 2 Ch. 426 ; *Loch v. John Blackwood Ltd.*, (1924) A. C. 783.

of the resolution of voluntary winding up.¹ It is also well established that a voluntary winding up amounts to a notice of discharge to servants of the company² unless there is a specific agreement by a company to furnish them with employment for a definite period.

Section 205 provides :

S. 205. When a company is wound up voluntarily, the company shall, from the commencement of the winding up, cease to carry on its business except so far as may be required for the beneficial winding up thereof ;

Provided that the corporate state and corporate powers of the company shall notwithstanding anything to the contrary in its articles continue until it is dissolved.

In spite of the appointment of a liquidator, the property of the company still vests in the company and does not vest in the liquidator. He is merely appointed to wind up the affairs of the company and can act on behalf of the company for such purpose.

When a resolution for voluntary winding up has been passed, the company must publish an advertisement in the local official gazette notifying that fact as prescribed in section 206 which runs as under :—

S. 206. (1) Notice of any special resolution or extraordinary resolution for winding up a company voluntarily shall be given by the company within ten days of the passing of the same by advertisement in the official gazette, and also in some newspaper (if any) circulating in the district where the registered office of the company is situate.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to a like penalty.

When a voluntary liquidator is appointed, he is also required to notify his appointment to the registrar as prescribed in section 214 which runs as under :—

S. 214. (1) The liquidator shall, within twenty-one days after his appointment, deliver to the registrar for registration a notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

As already observed, if a company is solvent and a special resolution is passed for voluntary winding up it is called members' voluntary winding up and such special resolution can be passed only after a declaration of solvency has been made by the directors as prescribed under section 207, which runs as under :—

S. 207. (1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a declaration verified

1. In re. Indian State Bank Ltd., 56 All. 692.

2. See in this connection Chapman's case, L. R. 1 Eq. 346 ; Reignt v. Union Mfg. Co., (1918) 1 K. B. 592.

by an affidavit to the effect that they have made a full inquiry into the affairs of the company, and that having so done, they have formed the opinion that the company will be able to pay its debts in full within a period not exceeding three years from the commencement of the winding up.

(2) Such declaration shall be supported by a report of the company's auditors on the company's affairs, and shall have no effect for the purposes of this Act unless it is delivered to the registrar for registration before the date mentioned in sub-section (1) of this section.

(3) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as a members' voluntary winding up and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as a creditor's voluntary winding up.

Further provisions relating to voluntary winding up are prescribed in sections 208 and 208A to 208E which are printed hereunder for reference :—

Provisions applicable to a members' voluntary winding up.	S. 208. The provisions contained in sections 208A to 208E, both inclusive, shall apply in relation to a members' voluntary winding up.
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Power of company to appoint and fix remuneration of liquidators.	S. 208A. (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.
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(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

S. 208B. (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.	Power to fill vacancy in office of liquidator.
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(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

S. 208C. (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called "the transferee company") the liquidator of the first mentioned company (in this section called "the transferor company") may, with the sanction of a special resolution of that company	Power of liquidator to accept shares, etc as consideration for sale of property of company.
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conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may in lieu of receiving cash, shares, policies, or other like interests or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within seven days after the passing of the special resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interests at a price to be determined by agreement or by arbitration in manner hereafter provided.

(4) If the liquidator elects to purchase the member's interests, the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

(6) The provisions of the Indian Arbitration Act, 1940 other than those restricting the application of the Act in respect of the subject-matter of the arbitration, shall apply to all arbitrations in pursuance of this section.

S. 208D. (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and of each succeeding year, or as soon thereafter as may be convenient within ninety days of the close of the year, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year and a statement in the prescribed form containing the prescribed particulars with respect to the position of the liquidation.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding one hundred rupees.

If the directors are unable to make a declaration of solvency as prescribed in section 207, then the provisions contained in sections 209, 209A to 209H govern such a winding up. These provisions are printed for reference hereunder :—

S. 209. The provisions contained in sections 209A to 209H both inclusive, shall apply in relation to a creditor's voluntary winding up.

S. 209A. (1) The company shall cause a meeting of the creditors to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised in the manner specified in sub-section (1) of section 206 for the publication of a notice under that sub-section.

(3) The directors of the company shall—

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid ; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors, held in pursuance of sub-section (1) of this section, shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made——

(a) by the company in complying with sub-sections (1) and (2),

(b) by the directors of the company in complying with sub-section (3),

(c) by any director of the company in complying with sub-section (4), the company, directors or director, as the case may be, shall be liable to a fine not exceeding one thousand rupees and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

S. 209B. The creditors and the company at their respective meetings mentioned in section 209A may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:

Provided that in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

S. 209C. The creditors at the meeting to be held in pursuance of section 209A or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on an application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

Fixing of liquidators' remuneration and cesser of directors' powers.

Sec. 209D. (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators, and where the remuneration is not so fixed, it shall be determined by the court.

(2). On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

Power to fill vacancy in office of liquidator.

S. 209E. If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by or by the direction of the court, the creditors may fill the vacancy.

Application of section 203C to a creditors' voluntary winding up.

section shall not be exercised except with the sanction either of the court or of the committee of inspection.

Duty of liquidator to call meetings of company and of creditors at end of each year.

S. 209G. (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year and a statement in the prescribed form containing the prescribed particulars with respect to the position of the winding up.

(2) If the liquidator fails to comply with this section, he shall be liable to fine not exceeding one hundred rupees.

Final meeting and dissolution.

S. 209H. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement specifying the time, place and object thereof and published one month at least before the meeting in the manner specified in sub-section (1) of section 206 for the publication of a notice under that sub-section.

(3) Within one week after the date of the meeting, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this sub-section the liquidator shall be liable to a fine not exceeding fifty rupees for every day during which the default continues :

Provided that, if a quorum (which for the purposes of this section shall be two persons) is not present at either such meeting, the liquidator shall, in lieu of such return, make a return that the meeting was duly summoned and that no quorum was present at either such meeting, the liquidator shall, in lieu of such return, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall in respect of that meeting, be deemed to have been complied with.

(4) The registrar on receiving the account and in respect of each such meeting either of the returns mentioned in sub-section (3) shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved :

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within ten days after the making of the order, to deliver to the registrar a certified copy of the order for registration, and if that person fails to do so he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

If any difficulty arises which the liquidator is unable to solve and similarly if any contributory or creditor is unable to ascertain his rights, procedure is prescribed in section 216 to determine any question arising for such winding up. Section 216 runs as under :—

S. 216. (1) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, staying of proceedings or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

Power to apply to court to have questions determined of powers exercised.

(2) The liquidator or any creditor or contributory may apply for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

Such application shall be made—

(a) if the attachment, distress or execution is levied or put into force by a High Court, to such High Court, and

(b) if the attachment, distress or execution is levied or put into force in any other Court, to the Court having jurisdiction to wind up the company.

(3) The Court, if satisfied that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

Other provisions for instance as the powers and duties of liquidators in voluntary winding up and distribution of property of the company, etc., etc. are contained in sections 211 to 215, 217, 218, 220 and 227 which are also reproduced hereunder for reference :—

S. 211. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Powers and duties of liquidator in voluntary winding up.

S. 212. (1) The liquidator may—

(a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and in the case of a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection, exercise any of the powers given by clauses (d), (e), (f) and (h) of section 179 to a liquidator in a winding up. The exercise by the liquidator of the powers given by this clause shall be subject to the control of the court and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of these powers ;

(b) without the sanction referred to in clause (a) exercise any of the other powers by this Act given to the liquidator in a winding up by the Court ;

(c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;

(d) exercise the power of the Court of making call;

(e) summon general meeting of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

Power of Court to appoint and remove liquidator in voluntary winding up.

S. 213. (1) If from any cause whatever there is no liquidator acting, the Court may appoint a liquidator.

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator.

Notice by liquidator of his appointment.

S. 214. (1) The liquidator shall within twentyone days after his appointment, deliver to the registrar for registration a notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Arrangement when binding on creditors.

S. 215. (1) Any arrangement entered into between a company about to be or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

Costs of voluntary winding up.

S. 217. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall, subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

Saving for rights of creditors and contributories.

S. 218. The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

Power of Court to adopt proceedings of voluntary winding up.

S. 220. Where a company is being wound up voluntarily, and an order is made for winding up by the court, the court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up.

Avoidance of transfers, etc., after commencement of winding up.

S. 227. (1) In the case of voluntary winding up every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up shall be void.

(2) In the case of a winding up by or subject to the supervision of the Court, every disposition of the property (including actionable claims) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up shall, unless the Court otherwise orders, be void.

Winding up Subject to Supervision of Court.

Power to order winding up subject to supervision.

S. 221. When a company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

A supervision order differs from an order for compulsory winding up inasmuch as in the former the winding up continues to be a voluntary winding up but the liquidator gets many of the advantages of a compulsory winding up as for example, no action can be commenced or proceeded with against the company without the leave of the Court. It is, however, necessary that a valid resolution for winding up has been passed. The court has a discretion to pass a supervision order and it takes into consideration such matters as the delay or negligence on the part of the liquidator to realise the assets of the company or where the liquidator is not acting properly with due regard to the rules of winding up or is otherwise partial to any creditor or other person or when the resolution for winding up has been obtained by fraud or where the powers of the liquidator appear to be insufficient for the purpose of winding up in so far as the interests of creditors or contributories are concerned.¹

Effect of petition for winding up subject to supervision.

S. 222. A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding up by the Court.

Court may have regard to wishes of creditors and contributories.

S. 223. The Court may, in deciding between a winding up by the Court and a winding up subject to supervision in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Effect of supervision order.

S. 225. (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily.

(2) Except as provided in sub-section (1), and save for the purposes of section 196, any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court.

(3) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidator, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding up subject to the supervision of the Court.

(1) *Jubilee Sites Syndicate, In re*, (1899) 2 Ch. 204.

CHAPTER IX
The Indian Companies Rules, 1941.
(As Amended by Subsequent Notifications)
(See Section 151.)

No. 23 (12) B-Tr. (C.L.)/37 —In exercise of the powers conferred by section 151 of the Indian Companies Act, 1913 (VII of 1913), the Central Government is pleased to make the following rules, namely :—

The Indian Companies Rules, 1941.

1. Short title, " extent," commencement and repeal.—(1) These rules may be called the Indian Companies Rules, 1941.

(2) " They extend to the whole of British India including Berar, and every reference therein to British India shall be considered as including a reference to Berar."

(3) They shall come into force on the 1st day of April, 1941.

(4) The Indian Companies Rules, 1914, are hereby cancelled :

Provided that the cancellation shall not affect the validity of anything done under or in pursuance of the said Rules, and in particular, shall not be deemed to require the re-making of any instrument in the appropriate form prescribed by these rules.

Note.—In the heading to this Rule after " title " the word " extent " has been inserted, sub-rules (2) and (3) have been re-numbered as sub-rules (3) and (4) respectively and the new sub-rule (2) has been inserted. (See Gazette of India, dated 23rd. August, 1941, Part I, p. 1194).

2. (1) In these rules, the " Act " means the Indian Companies Act, 1913 (VII of 1913.)

(2) For the purposes of these rules, the registrar shall be the sole authority to decide whether an officer of a company is a " responsible officer of the Company " or not.

3. Verification of copies of contracts under section 104.—Copies of contracts required to be filed with the registrar under section 104 of the Act shall be verified :—

(i) by an affidavit of a responsible officer of the company that they are true copies, or

(ii) by certification of public officers under section 76 of the Indian Evidence Act, 1872 (I of 1872).

4. Verification of copies under sections 109, 109A and 110.—A copy of an instrument or deed filed with the registrar for registration under section 109, section 109A or section 110 of the Act shall be verified :—

(i) where the mortgage or charge comprises solely property situate outside British India, by a certificate under the seal of the company or under the hand of some person interested therein otherwise than on behalf of the company, that it is a true copy ;

(ii) in other cases, by an affidavit of a responsible officer of the company that it is a true copy or by a certificate by a public officer under section 76 of the Indian Evidence Act, 1872, (I of 1872).

5. Manner of giving notice under section 153-B.—The notice required by section 153-B of the Act to be given by the transferee company shall be given to the dissenting shareholder either personally, or by sending it by registered post to his address registered in the books of the transferor company, or (if he has no address within India so registered) to the address, if any, within British India supplied by him to the transferor company for the giving of notice to him.

"If the dissenting shareholder has no registered address in British India and has not supplied to the transferor company an address within British India for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears."

Note.—In Rule 5 after the words "notice to him" the matter within quotation marks has been added by Notification No. 23 (10) Tr.—(C.L.)/41, dated 19th April, 1941, (See Gazette of India, dated 19th April, 1941, Part I, p. 565).

6. Certification of document under section 277 of the Act.—A copy of a document required to be certified under sub-section (1) of section 277 of the Act shall :—

(i) in the case of a company incorporated in a country outside His Majesty's dominions be,

(a) duly certified as a true copy by an official of the Government to whose custody the original is committed, the signature or seal of such official being authenticated by any of the British officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53, Vict. c. 10), or in any Act amending the same, or

(b) by a notary of such country, the certificate of the Notary being authenticated by any of the British officials as aforesaid, or

(c) by some officer of the company before a person having authority to administer an oath as provided by section 3 of the said Oaths Act, the status of the person administering the oath being authenticated by any of the British Officials as aforesaid ; and

(ii) in the case of a company incorporated in any part of His Majesty's dominions

(a) be duly certified as a true copy by an official of the Government to whose custody the original is committed, or

(b) by a notary public of such place, or

(c) on oath by an officer of the company before a person having authority to administer an oath in such place.

7. Certification of translations under section 277 or section 277-B.—Translations of documents required to be filed with the registrar under section 277 or section 277-B of the Act shall be certified as correct translations :—

(i) where such translation is made outside of British India,

(a) by an official having custody of the original, or

(b) by a notary public of the country or place where the company is incorporated :

Provided that where the company is incorporated in a country outside His Majesty's dominions, the signature or seal of the person so certifying shall be authenticated by any of the British officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53, Vict., c. 10), or in any Act amending the same ;

(ii) where such translation is made in British India :—

(a) by an advocate, attorney or pleader entitled to appear before the High Court, or

(b) by an affidavit of some person having, in the opinion of the registrar, a competent knowledge of the language of the original and of English.

8. Power of Central Government to relax rules 6 and 7.—The Central Government may in any particular case if it thinks fit and upon such conditions

as it may impose, permit copies or translations not certified in accordance with rules 6 and 7 to be filed with the registrar.

9. Time for filing alteration of particulars under section 277.—Notice of any alteration which is required by sub-section (1) of section 277 of the Act to be filed with the registrar shall be filed within one month of the date on which the notice could in due course of post, and if despatched with due diligence, have been received by the registrar from the place where the company is incorporated.

10. Translation of documents other than those under section 277.—If any portion of any document required to be filed under any provision of the Act other than section 277 is not in the English language, a translation thereof, certified by a responsible officer of the company to be correct, shall be furnished along with each copy deposited with the registrar.

Provided that the registrar may exempt any company from the operation of this rule in respect of such documents as he may think fit.

11. Forms.—The forms set forth in the Schedule hereto annexed or forms as near thereto as circumstances admit shall be used in all matters to which these forms relate.

Payment of fees.—All fees payable under the Act shall be paid in cash.

The Schedule

FORM I

Declaration On Registration of Company

THE INDIAN COMPANIES ACT, 1913

(See Section 24)

Filing fee : Rs. 3/-.

Name of company.....

Declaration of compliance with the requirements of the Indian Companies Act, 1913, made pursuant to section 24 (2) on behalf a company proposed to be registered as the

.....

Presented for filing by.....

I..... of do solemnly and sincerely declare that I am an Advocate/Attorney/a Pleader entitled to appear before a High Court who is engaged in the formation of the company/a person named in the articles as a director/Manager/Secretary of the.....and that all the requirements of the Indian Companies Act, 1913, in respect of matters precedent to the registration of the said company and incidental thereto have been complied with, save only the payment of the fees and sums payable on registration. And I make this solemn declaration conscientiously believing the same to be true.

Note.—The declaration need not be either —

(a) signed before a magistrate or an officer competent to administer oaths, or

(b) stamped as an affidavit.

FORM II

Notice of the Situation of the office where a British register is kept or of any change in, or discontinuance of, any such office.

THE INDIAN COMPANIES ACT, 1913

(See Section 41)

Name of company.....
 Presented for filing by.....
 To the Registrar of Joint-Stock Companies.....
Limited hereby gives you notice in
 accordance with section 41 of the Indian Companies Act, 1913, and by the
 authority of a special resolution of the company, duly passed on the.....
day of...../ clause.....of the company's
 articles of association that a Branch register is now kept at.....
/in lieu of...../kept at
 /is discontinued.

Signature

Designation

(State whether Director or Manager or Secretary)

Dated this.....day of.....19.....

No. of company.....

Filing fee Rs. 3/-

FORM III

Notice of consolidation, Division, Sub-Division, or conversion into stock of shares specifying the shares so consolidated, divided, sub-divided, or converted into stock, or of the re-conversion into shares of stock, specifying the stock so re-converted, or of the cancelation of shares (otherwise than in connection with a reduction of share capital under Section 55 of the Indian Companies Act, 1913.)

THE INDIAN COMPANIES ACT, 1913

(See Sections 50/51)

Name of company.....
 Presented for filing by.....
 To the Registrar of Joint Stock Companies.....
Limited, hereby gives you notice in accordance
 with section 50/51 of the Indian Companies Act, 1913 that :—

¹(i).....shares of Rs.....each (.....
) have been consolidated and divided into.....
 shares of Rs.....each (of larger amount than the shares
 consolidated)(.....)(Sections 50 and 51)

¹(ii).....shares of Rs.....each (.....
)on which Rs.....per share is paid up/have
 been sub-divided into.....shares of Rs.....
(of smaller amount than the shares sub-divided) (.....
)on which Rs.....per share
 is paid up (which must be proportionate to the reduced nominal value of each
 share). (Section 50).

¹(iii).....fully paid shares of Rseach
numbered.....to.....have been converted in stock,
¹(iv) Rs.....of stock has been re-converted into.....
.....fully paid shares of Rseach, numbered.....
.....to.....(Sections 50 & 51).
¹(v).....shares of Rs:.....each, being
unissued capital, have been cancelled, and the amount of the authorised capital
has been correspondingly diminished (Section. 50,.

Signature
Designation.

(State whether Director or Manager or Secretary)

Dated this.....day of.....19.....
No. of the company.

FORM IV
Notice of Increase in Share Capital
THE INDIAN COMPANIES ACT, 1913
(See Section 53)

Filing fee.....Difference between fee payable on capital as
increased and fee already paid.
Name of company.....
Presented for filing by.....
To the Registrar of Joint Stock Companies.....
.....Ltd., hereby gives you notice pursuant
to Section 53 of the Indian Companies Act, 1913, that by¹.....
.....resolution of the company dated the.....day of
.....19.....the shares capital of the company
has been increased by the addition thereto of the sum of Rs.....be-
yond the registered capital of Rs.....

The additional capital is divided as follows :—

Number of shares	Class of shares	Nominal Amount of each share.

The conditions (e.g., voting rights, dividends, etc.) subject to which the new
shares have been or are to be issued are as follows :—
(if any of the new shares are preference shares state whether they are
redeemable or not).

Signature
Designation.

(State whether Director or Manager or Secretary)

(1) A separate notice for each item is to be given strike out the items which do not apply.
(2) "Ordinary," "extra-ordinary" or "special."

Dated this.....day of.....19.....
 No. of company.....

FORM VI¹
Notice of Situation of Registered Office or any
Change Therein
THE INDIAN COMPANIES ACT, 1913.
 (See Section 72)

Name of the company.....
 Presented for filing by
 To the Registrar of Joint Stock Companies.....
Limited, hereby gives you notice,
 in accordance with section 72 of the Indian Companies Act, 1913, that the
 registered office of the company is situated at...../was re-
 moved from.....
 to
 on the.....19.....

Signature
 Designation

Dated thisday of.....19.....
 (State whether Director or Manager or Secretary)

FORM VIII
Special Resolution/Extraordinary Resolution²
of the

.....Company, Limited.
THE INDIAN COMPANIES ACT, 1913.
 [See Section 82 (1)]

Filing, fee Rs. 3.

Date of despatch of notice specifying the intention to propose the reso-
 lution as a special resolution/extraordinary resolution.

Passed.....19.....

Name of the company.....
 Presented for filing by
 To the Registrar of Joint Stock Companies.....
 At a general meeting of the members of the said company, duly convened
 and held at in the town of on
 the.....day of.....19.....the following special
 resolution/extraordinary resolution was duly passed.

Resolved that.....

.....

1. N. B.—(Form VI). This notice must be with the registrar within 28 days of incorpora-
 tion or of the change, as the case may be.

2 Strike out the portion which does not apply. A separate notice is to be given for a
 special resolution and for an extraordinary resolution.

Note—(Form VIII) To be printed or typewritten and duly certified under the signature of an
 officer of the Company and filed with the registrar within 15 days from the passing of the
 resolution.

Signature
Designation
(State whether Director,
Manager, Secretary or other
officer of the company)

Dated this..... day of.....19.....

FORM XII
Particulars of Directors, Managers and Managing Agents and of Any
Changes therein
THE INDIAN COMPANIES ACT, 1913.
(See Section 87)

Filing fee Rs. 3/-

Name of the Company.....
Presented for filing by.

The Present Christian name or names and surname (a) (d)	Any former Christian name or names or surname	Nationality	Nationality of origin (if other than the present na- tionality)	Usual residential address	Other business occupation & Director- ships if any. If none state so (b)	Date of appointment or change	Changes (c)

Signature.
Designation.
(State whether Director, Manager or Managing Agent
Dated the..... the day of.....194

(a) In the case of a corporation its corporate name and registered or principal office should be shown.

(b) The individual's primary business, occupation and particulars of all other directorships held by him must be entered.

(c) Particulars of change among Directors, managers or managing Directors should be sent to the registrar. A note of the changes since the last list should be made in this column, e.g. by placing against a new Director's name the words "in place of....." and by writing against any former director's name change caused by death registration retirement removal rotation disqualification.

(d) In the case of a firm the full name, address and nationality of each partner and the date on which each became a partner.

FORM XV

Return of Allotment.

THE INDIAN COMPANIES ACT, 1913.

(See Section 104)

Filing fee (See Note 2, next page)

Name of company.....

Return of allotments of the.....

made on the following date/dates ¹.....filed with the

Registrar pursuant to section 104 (1).

Presented for filing by.....

No.	Nominal amount	Due and payable- called up per shares including Application & Allotment.	Paid up (excluding Premiums on shares and calls in Advance).	
			Per share.	Total.
1	2	3	4	5

2. Shares allotted for a consideration other than Cash :—

Number.....

Nominal Amount.....Rs.....

Amount to be treated as paid up on each share.....Rs.

The consideration for which such shares have been allotted is as follows:—

Property and Assets acquired.....Rs.

(Description)

Goodwill of.....Rs.....

Services (give nature of service).....Rs.

Other items (to be specified).....Rs.

3. *Number of shares issued at a discount (*vide* section 105).....

Continued see next page

1. Insert date or dates of the allotments.

2. Distinguish between preference ordinary, or other description of shares, specifying, Redeemable Preference shares, if any, in all cases.

Note 1. In making a return of allotments under Section 104 (1) of the Indian Companies Act, 1913, it is to be noted that:—

When a return includes several allotments made on different dates, the actual dates of

all such allotments, should be entered at the top of the front page, and the registration of the return should be effected within the month of the first date.

Note 2. The filing fee is payable—Vide Government of India, Notification No 23 (II) Tr. (C. L.) 41 dated the 6th June, 1942 (*vide* Gazette of India, dated 6th June, 1942, Part I, P. 983):—

Where the aggregate paid up value of the shares allotted does not exceed Rs. 25/- 0 4 0

Where the aggregate paid up value of the shares allotted exceeds Rs. 25/- but does not exceed Rs. 50/- 0 8 0

Where the aggregate paid up value of the shares allotted exceeds Rs. 50/- but does not exceed Rs. 75/- 0 12 0

Where the aggregate paid up value of the shares allotted exceeds Rs. 75/- but does not exceed Rs. 100/- 1 0 0

Where the aggregate paid up value of the shares allotted exceeds Rs. 100/- 0 0

FORM XVI

Particulars of Oral Contract.

THE INDIAN COMPANIES ACT, 1913.

[Pursuant to Section 104 (2).]

Filing fee Rs. 3/-

Name of Company

The particulars must be stamped with the same stamp duty as would have been payable if the contract had been reduced to writing.

Presented for filing by

Particulars of contract relating to shares allotted as fully or partly paid up otherwise than in cash by Limited.

(1) The number of shares or allotted fully as partly paid up otherwise than in cash

(2) The nominal amount of each such share. Rs.

(3) The amount to be considered as paid up on each such shares otherwise than in cash Rs.

(4) If the consideration for the allotment of such shares is services, or any consideration other than that mentioned below, in part 5, state the nature of such consideration, and the number of shares so allotted.	No. of shares Details of consideration
---	---

(5) If the allotment is made in satisfaction or part satisfaction of the purchase price of property, give a brief description of such property, and full particulars of the manner, in which the purchase price is to be satisfied.

(1) Brief description of property.

(2) Purchase price Rs.

(i) Total amount considered as paid on.....
shares allotted otherwise than in cash Rs.

(ii) Debentures issued..... Rs.

(iii) Cash Rs.

(iv) Amount of debt released or liabilities assumed by the purchaser (including mortgages on property acquired) Rs.

Total purchase price Rs.

- (6) Give full particulars, in the form of the following table, of the property, which is the subject of the sale, showing in detail how the total purchase price is apportioned between the respective heads :—

Rs. A. P.

Legal Estates in Freehold property and Fixed Plant & Machinery and other fixtures thereon ¹.

Legal Estates in Leasehold Property ¹.
Fixed Plant and Machinery on Leasehold Property (including Tenants' Trade and other fixtures)

Equitable Interest in Freehold or Leasehold Property.

Loose Plant and Machinery, Stock-in-trade, and other Chattels. ¹.

Goodwill and benefit of Contracts.

Patents, Designs, Trade Marks, Licences, Copy-rights, etc.

Book and other Debts.

Cash in hand and at Bank on Current Account, Bills,

Notes etc. ,

Cash on deposit at Bank or elsewhere.

Shares, Debentures and other investments

Other items (to be specified)

Rs.

Signature.....

Designation.....

(State whether Director, or Manager, or

Secretary)

Dated the.....day of.....19...

(1) Where such properties are sold subject to mortgage, the gross value should be shown.

(2) No plant and machinery which was not in actual state of severance on the date of the sale should be included under this head.

FORM XVIII

Particulars of Mortgages or Charges.
(THE INDIAN COMPANIES ACT, 1913).
(See Section 109 and 277-D).

Filing Fee Rs. 3/-

Name of Company.....

Particulars to be filed with the registrar pursuant to section 109, of a mortgage or charge created by the.....and being:—

- (a) a mortgage or charge for the purpose of securing any issue of debentures,
or
(b) a mortgage or charge on uncalled share capital of the company, or
(c) a mortgage or charge on any immovable property wherever situate, or any
interest thereon, or
(d) a mortgage or charge on any book debts of the company, or
(e) a mortgage or a charge not being a pledge on any movable property of
the company except stock-in-trade; or
(f) a floating charge on the undertaking or property of the company
(Strike out the sub-heads (a), (b), (c), (d), (e), or (f) which do not apply)
Particulars of mortgage or charge created by the.....

- (1) Date of the instrument creating or evidencing the mortgage or charge and description thereof.¹
- (2) Amount secured by the mortgage or charge.²
- (3) Short particulars of the property mortgaged or charged.
- (4) Gift of the terms or conditions or extent or operation relating to any mortgage or charge.
- (5) Names (with addresses and descriptions) of the mortgagees or persons entitled to the charge... ..
- (6) Amount or rate per cent of the commission, allowance or discount (if any)

Signature.....

Designation,.....

(State whether Director, Manager, or Secretary,
or Person authorised to accept service of
process under section 277 (1) (d).)

Dated this.....day of.....19.....

(1) A description of the instrument, e.g., "Trust," "Mortgage," "Debenture" etc., as the case may be, should be given.

(2) A definite figure is to be given.

FORM XIX

! Particulars of modifications of Mortgage or Charge

THE INDIAN COMPANIES ACT, 1913.

(See Sections 116 (3) and 277-D)

Filing Fee Rs. 3/-

Name of Company.....

Presented for filing by.....

Particulars.	According to original Instrument.	According to modifying Instrument. ¹
1	2	3

-
- I. Date and description of Instrument.
 2. Amount secured by the mortgage or charge.
 3. Brief particulars of property mortgaged.
 4. Gist of terms or conditions, or extent or operation of the mortgage or charge.
-

Signature.....

Designation.....

(State whether Director, Manager or Secretary
or person authorised to accept service of
process under Section 277 (1) (d).)

Dated..... day of 19

(1) In this column, particulars have to be given only when there is a variation from column 2.

Note :—Section 115 (3) of the Indian Companies Act, 1913, provides that :—

Whenever the terms or conditions or extent or operation of any mortgage or charge registered under this Section are modified, it shall be the duty of the company to send to the registrar the particulars of such modification, and the provisions of this Section as to registration of a mortgage or charge shall apply to such modification of the mortgage or charge as aforesaid.

FORM XX

Particulars of a Mortgage or Charge Subject to which property has been acquired on or after the 15th January, 1937.

THE INDIAN COMPANIES ACT, 1913.

(See Section s 109-A and 277-D)

Filing fee Rs. 3/-

Name of Company.....

Presented by.....

Particulars of a mortgage or charge subject to which property has been acquired on or after the 15th January, 1937, by.....a company registered in British India/a company incorporated outside and having a place of business in British India.¹

(1) Date and description of the instrument creating or evidencing the mortgage or charge.²

(2) Date of the acquisition of the property.

(3) Amount owing on security of the mortgage or charge.

(4) Short particulars of the property mortgaged or charged.

(5) Gist of the terms or conditions or extent or operation relating to any mortgage or charge.

(6) Names, addresses, and descriptions of the mortgages or persons entitled to the charge.

(In the case of a company incorporated in British India).

Signature.....

Designation.....

(State whether Director, Manager, or Secretary, or Person authorised to accept service of process under section 277 (1) (d)] (3)

Dated this..day of 19.....

(1) Strike off the portion which does not apply.

(2) Description of the instrument, e. g., "Trust Deed," "Mortgage," "Debenture," etc. as the case may be should be given.

Note.—A copy of the instrument, certified as prescribed in Rule 4 of the Indian Companies Rules, 1941, must be delivered with these particulars.

FORM XXII

Registration of Series of Debentures
THE INDIAN COMPANIES ACT, 1913
 (See Sections 110 and 277D)

Filing fee Rs. 3.

Name of company.....

Particulars to be filed with the registrar pursuant to section 110 relating to a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of the said series are entitled *pari passu*, created by the.....
 Presented for filing by.....

1. Total amount secured by the whole series.

2. Amount of the present issue of the series.

3. Dates of resolution authorising the issue of the series.

4. Dates of the covering deed (if any) by which the security is created or defined, or if there is no such deed the date of the first execution of any debenture of the series. ¹

5. General description of the property charged.

6. Gist of the terms and conditions or extent or operations relating to any mortgage or charge.

7. Names and addresses of the trustees (if any) for the debenture-holders.

8. Amount or rate per cent of the commission, allowance or discount (if any).

Signature.....

Designation.....

[State whether Director, Manager, or
 Secretary or person authorised to
 accept service of process under
 Section 277 (1) (d.)]

Dated this.....day of.....19.....

I. A description of instrument, e.g., "Trust Deed", "Mortgage," "debenture" etc., as the case may be, should be given.

Note.—The deed, if any, or a copy thereof verified in accordance with rule 4, of the Indian Companies Rules, 1941, containing the charge must be filed with these particulars with the registrar within twenty-one days after the execution of such deed, or if there is no such deed, one of the debentures must be so delivered within twenty-one days after the execution of any debentures of the series.

FORM XXIII

Registration when more than one issue of the same Series.

THE INDIAN COMPANIES ACT, 1913.

(See Sections 110 and 277-D)

Filing Fee Rs. 3/-

Name of company.....

Statement of particulars as required by section 110 when more than one issue is made of debentures in a series.

Presented for filing by.....

Particulars of an issue of debentures made by.....

To be entered on the register pursuant to the proviso to section 110 of the Indian Companies Act, 1913.

1. Date of present issue.

2. Amount of present issue.

3. Gist of the terms or conditions
or operation relating to any mort-
gage or charge.

4. Particulars as to the amount of
rate per cent of the commission,
allowance, or discount (if any).

5. Total amount covered by the
whole series.

6. Total amount of issue including the
present issue.

I. The rate of interest payable under the terms of the debentures should not be entered.

Note.—Section 110 of the Indian Companies Act, 1913, and the proviso thereunder provide :—

(1) For registration of particulars of the entire series, (for which purpose form No. XXII must be used) and

(2) When there is more than one issue of debentures of the series for, the registration of the amount and date of each issue after the first (for which purpose this form No. XXIII must be used).

FORM XXIV

Chronological Index of Charges entered in the Register

THE INDIAN COMPANIES ACT 1913

(See Section 13)

Serial number of charge in this index.	Date of Regis- tration.	Name of com- pany.	Number of company.	Amount of mortgage or charge.	Date of trust deed.	Debentures		Other mort- gages etc	By whom registered.	Names and addresses of mortgagee or trustees for debentures holders or other persons entitled to the charge.	Remarks.
						First issue.	Further issue.				
1	2	3	4	5	6	7	8	9	10	11	12

FORM XXV

Notice of Appointment of a Receiver.

THE INDIAN COMPANIES ACT 1913.

(See Section 118)

Filing fee Rs.3/-

Notice pursuant to section 118 as to the appointment of a receiver,
 The Company.....
 I presented for filing by.....
 To the Registrar of Joint Stock Companies.....
 I.....of.....hereby give notice that :—

¹ (1) I have obtained an order of the ².....dated.....
 for the appointment of Mr.....of.....as receiver
 of the property of this company.

¹ (2) On the.....day of.....I appointed Mr.....
of.....as receiver of the
 property of this company under the powers contained in an instrument³
 dated.....

Signature.....

Dated this.....day of.....19.....

Note.—(Form XXV). This notice must be filed within 15 days of the order
 or of the appointment under the instrument. The penalty for default is
 a fine not exceeding Rs. 50/- for every day during which the default continues.

1. Of these two paragraphs strike out that which does not apply.
2. Insert name of Court making the order.
3. Describe fully the instrument under which appointment is made.

FORM XXVI

Abstract of Receiver's Accounts.

THE INDIAN COMPANIES ACT, 1913.

(See Section 119)

(No filing fee payable)

Name of company.....

Presented for filing by.....

Name and address of Receiver.....

Date and description of instrument under which Receiver is appointed.....

Date of taking possession.....

Period covered by the abstract.

From.....

To.....

ABSTRACT

RECEIPTS		PAYMENTS	
Brought forward	Rs. A. P.	Brought forward	Rs. A. P.
Carried forward		Carried forward	

(Signature of Receiver)

Dated this.....day of.....19.....

(Note.— Form XXVI). The receipts and payments must severally be added up at the foot of each sheet, and the totals carried forward from one abstract to another without any intermediate balance, so that the gross totals shall represent the total amounts received and paid by the receiver since the date of appointment.

FORM XXVII

Notice to be Given by a Receiver or ceasing to Act as Such.

THE INDIAN COMPANIES ACT, 1913.

(See Section 119)

Filing fee Rs. 3/-

Name of company.....

Presented for filing by.....

To the Registrar of Joint Stock Companies.....

I, the undersigned.....of.....hereby give
you notice that I ceased to act as receiver of the.....Company.
Limited, on the.....day of.....

Signature.....

Dated this.....day of.....19.....

FORM XXVIII

Memorandum of satisfaction of Mortgage or Charge.

THE INDIAN COMPANIES ACT, 1913.

(See Sections 121 and 277-D)

Filing fee Rs. 3/-

Name of company.....

Presented for filing by.....

The.....(name of company) hereby gives notice that the registered
charge, being mortgage/charge/hypothecation/debenture/series of debentures
authorised by resolution, dated the.....for Rs.....of
which particulars were registered with the registrar of companies on the
.....day of.....19.....was satisfied on
the.....day of.....19.....

2. The name (s) and address (es) as the mortgage (e)/trustee (s) for the
debentures-holders are.....

(In the case of a company incorporated in British India)

Signature.....

Designation.....

(State whether Director, Manager, or Secretary)

Dated this.....day of.....19.....

(In the case of a company established outside British India)

Signature of any one or more of the persons authorised under.....
section 277 (1) (d) of the Indian Companies Act, 1913.....or
of some other person authorised by the company.....

Dated this.....day of.....19.....

FORM XXIX

Notice to Dissenting Shareholders.

THE INDIAN COMPANIES ACT, 1913.

(See Section 153-B)

Re ¹.....Limited.,Notice by ².....Limited.,To ³

Whereas on the.....day of.....19.. (2) made on offer to all the holders of ⁴.....shares in (1) (state shortly the nature of the offer) and whereas upto the.....day of.....19..... being a date within four months of the date of the making thereof such offer was approved by the holders of not less than three-fourths in value of the ⁴.....shares in the said company. Now, therefore, the said ² (2).....in pursuance of the provisions of section 153-B of the Indian Companies Act, 1913, hereby gives you notice that if the said 2

desires to acquire the ⁴
held by you.

shares in the said ¹

And further take notice that unless upon an application made to the Court by you the said ¹ (1).....on or before the... ..day of.....19.....being one month from the date of this notice the court thinks fit to order otherwise, the said ².....will be entitled and bound to acquire the (4) ³.....shares held by you in the said ⁴ (1)..... on the terms of the above mentioned offer approved by the approving ³.....shareholders in the said company.

Signature for ²

Designation.....

(State whether Director Manager or Secretary)

Dated this.....day of.....19.....

No. of company.

(1) Name and address of dissenting shareholder.

(2) Name of transferee company.

(3) If the offer is limited to a certain class or classes of shareholders, insert particulars of the shares.

(4) Name of transferor company.

REGISTERS ETC. TO BE KEPT AT COMPANY'S OFFICE**Section****Registers &c.**

- 31 & 36. Register of Members with particulars.
- 32 (3) Annual list of members in separate part of register of members to be completed within twenty one days after every general meeting.
- 34 Transfer of shares Register.
- 42 , Duplicate of British Members' Register, if any.
- 83 Proceedings Books of Directors, Meetings, Minute Book of General Meetings.
- 87 Register of Directors, Managers and Managing Agents.
- 91A Register of particulars of contracts etc.
- 113 Copies of instruments creating mortgages or charges.
- 117 Register of mortgages and charges.
- 125 Register of debenture-holders.
- 130 Books of Accounts.
- 131 (3) Copy of Balance Sheet for inspection of Members at least fourteen days before the meeting.

DOCUMENTS ETC. REQUIRED TO BE FILED WITH REGISTRAR

<i>Section</i>	<i>Particulars</i>	<i>Period within which document to be filed</i>
15 (1)	Certified copy of order of Court confirming alteration in Memorandum with printed copy of the altered Memorandum.	3 months
15 (2)	Certified copy of order of Court confirming the charge of Registered Office.	3 months
22	Memorandum & Articles (if any) for registration.	"
24 (2)	Declaration by Advocate, Attorney or Pleader engaged in formation of the Company or Director, Manager or Secretary named in the articles regarding compliance with requirements of the Act for incorporation of the company.	"
32 (3)	Copy of the annual list and summary signed by Director or Officer of the Company.	Within 18 months from incorporation & once every year subsequently.
32 (4)	Certificate regarding number of members of the Company.	Annually.
39	Notice of rectification of the Register of Members.	Fortnight.
41	Notice of situation of office where British Register is kept, if any	1 month.
50 (4)	Notice of exercise of powers of subdivision and cancellation of shares	15 days.
51	Notice of consolidation of shares and conversion thereof into stock or reconversion thereof	15 days.
53	Notice of increase of share capital or of members.	15 days.
61	Certified copy of order of the Court confirming reduction of share capital and of the minute.	
64	Notice of situation of Registered Office and of any change therein.	28 days.
82	Printed or typed copy of special or extra-ordinary resolution certified by officer of the company.	15 days.
87	Particulars of Register of Directors and Managers etc and notification of change amongst them.	14 days.
104 (1) (a)	Return as to allotments	1 month
104 (a) (b)	Particulars as to fully or partly paid up shares	1 month
104 (2)	Oral contract re allotment of fully or partly paid up shares.	Within 1 month
{ 109, 109A	Particulars of mortgages, debentures or charges on	
{ 110 & 116	company's property and of modifications thereof	21 days.
111	Particulars re. commission on debentures.	21 days.
118	Notice of appointment of receiver	15 days.
119	Extract of Receiver's Account	...
121	Intimation of payment or satisfaction of any charge or mortgage.	21 days.
{ 153 &	Certified copy of order of Court regarding arrange-	
{ 153A	ments and compromises.	14 days.
214.	Notice of appointment of voluntary liquidator	21 days.

OFFENCES AND PENALTIES UNDER THE INDIAN COMPANIES ACT

<i>Section.</i>	<i>Offence.</i>	<i>Person Liable</i>	<i>Maximum Penalty.</i>
4 (5)	Being a member of company, association or partnership, formed in contravention of this section.	Member	Rs. 1,000.
25 (2)	Default in sending copy of memorandum and articles of association on requisition of member.	Company	Rs. 10 for each default.
25A (2)	Issuing memorandum or articles without alterations.	Company & Officers	Rs. 10 for each default.
31 (2)	Default in keeping register of members.	do.	Rs. 50 a day during default.
32 (5)	Default in complying with provisions of this section, viz., making & filing of annual list of members and summary and certificate required by section 32 (4).	do.	do.
34 (5)	Default in informing transferor and transferee of share or debenture as provided in sub-rule 4.	Company, Directors, Manager, Secretary and Officers	do.
36 (3)	Default in allowing inspection of register of members or supplying copy of the same or of list and summary on payment.	Company & Officers.	Rs. 20 for each default & Rs. 20 a day during default.
41 (3)	Omission to keep British register where necessary.	Company	Rs. 50 a day during default.
47 (2)	Default in keeping particulars of share warrants in register of members as prescribed.	Company & Officers.	do.
51 (2)	Failure to file notice <i>re.</i> consolidation or conversion of shares into stock and <i>vice versa.</i>	do.	do.
53 (3)	Failure to file particulars about increase of share capital or of members with registrar as prescribed	do.	do.
54A (3)	Contravention of provisions sub-section (1)—buying its own shares.	Company & Officers	Rs. 1,000
62 (2)	Failure to embody minute of reduction as prescribed.	do.	Rs. 10 for each copy.
64	Concealment of name of objecting creditor in reduction of shares.	Officers	Imprisonment for 1 year or with fine or with both.
56A (5)	Omission to file order with registrar <i>re.</i> variation of rights of special classes of shares as prescribed.	Company & Officers	Rs. 50

Section.	Offence.	Persons liable	Maximum Penalty.
70 (3)	In a company with unlimited liability of directors, failure to notify such unlimited liability as prescribed.	Directors, proposers, promoters & Officers	Rs. 1,000
72 (4)	Carrying on business without having registered office and without notifying the same to the registrar as prescribed.	Company	Rs. 50 a day during which business is carried on.
74 (1)	Non-publication of name on board as prescribed.	Company & Officers.	Rs. 50 a day.
74 (2)	Using seal without name of company or issuing bill heads etc. without its name as provided.	Officers & Agents.	Rs. 500.
75 (2)	Default in publishing paid up capital where subscribed capital published.	Company & Officers	Rs. 1,000
76 (2)	Default in holding annual general meeting as prescribed.	Company, Directors, Manager.	Rs. 500.
82 (4) & (6)	Default in filing copy of special or extra-ordinary resolution with registrar as prescribed.	Company & Officers	Rs. 20 a day during default.
82 (5) & (6)	Default in embodying special resolution with articles as prescribed.	Company & Officers	Rs. 10 for each copy.
83 (6)	Default in allowing inspection of minutes of proceedings of general meetings or supplying copy as prescribed.	Company & Officers	Rs. 25 & Rs. 25 a day during default.
85 (2)	Acting as director without acquiring qualification as prescribed.	Director in default.	Rs. 50 a day.
86A (1)	Undischarged insolvent acting as director or managing agent or manager.	Such director.	Imprisonment for two years or fine Rs. 1000 or both.
87 (4)	Default in keeping register of directors, manager etc. or refusal to allow inspection as prescribed.	Company & Officer	Rs. 50 (fixed)
87E (2)	Making or guaranteeing loan to company under its management in contravention of the provisions of this section.	Directors & Officers	Rs. 1,000; also liable for loss.
91A (2)	Failure to disclose interest by director.	Director	Rs. 1,000
91A (4)	Failure to keep particulars of contracts or arrangements or refusing inspection of such particulars.	Officer	Rs. 500
91C (2)	Failure to comply with provisions relating to disclosure of contract appointing manager etc.	Company & Officers	Rs. 1,000

<i>Section.</i>	<i>Particulars.</i>	<i>Person liable</i>	<i>Maximum penalty.</i>
104 (3)	Failure to submit return as to allotments as prescribed.	Officers	Rs. 500 a day during default.
105A (3)	Omission to insert particulars of discount in balance-sheet as prescribed.	Company & Officers	Rs. 50
105B (2)	Contravention of provisions relating to redeemable preference shares & omission to include particulars & balance-sheet.	Company & Officers	Rs. 1,000.
108 (2)	Default in completing and having ready for delivery share certificates & debentures allotted or transferred as prescribed.	Company & Officers	Rs. 50 a day during default.
109A (2)	Omission to register charges of properties acquired subject to charge as prescribed.	Company & Officers	Rs. 500 (fixed).
118 (2)	Omission to file notice of appointment of receiver on company's properties with registrar.	Person appointed receiver or obtaining appointment thereof.	Rs. 50 a day during default.
119 (3)	Default in filing accounts of receiver with the registrar as prescribed.	Director, manager, managing agent, secretary or other officer & receiver.	Rs. 200
122 (1)	Default in filing particulars of mortgage or charge or of payment or satisfaction of debt charged on company's property or issue of debentures with the registrar.	Company, Officers and other persons	Rs. 500 a day during default.
122 (2)	Default in complying with requirements as to registration of mortgage or charge with the registrar.	Company or Officers.	Rs. 1,000
122 (3)	Default in embodying certificate of registration on debenture or debenture stock requiring registration with the registrar.	Person authorising delivery thereof.	Rs. 1,000
123 (2)	Omission in keeping registration of mortgages up-to-date.	Directors, manager or other officers	Rs. 500
124 (2)	Refusal to allow inspection of copies of instruments creating mortgages and charges and company's register of mortgages.	Company & Officers	Rs. 50 & Rs. 20 further a day during default.
125 (3)	Refusal to allow inspection of register of debenture-holders and to supply copies of trust deeds.	do.	do.

Section.	Particulars.	Person liable	Maximum Penalty.
130 (4)	Refusal to keep proper books of accounts at the registered office and at the branch office as prescribed.	Managing Agent, Partners of Managing Agent's Firm, Directors.	Rs. 1,000
131A (3)	Omission to attach directors' report with the balance-sheet.	Directors	Rs. 1,000
133 (3)	Default in authentication of balance-sheet as prescribed.	Company & Officers	Rs. 500
136	Default by banks & insurance companies in complying with section 136.	Officers & former Officers	Rs. 50 a day during default.
140 (3)	Refusal to allow inspection of books or to give information to govt., officers as prescribed.	Officers & for- mer Officers	Rs. 50 for each offence.
142 (3)	Refusal to produce books and documents required to be produced by inspectors appointed by company as prescribed.	do.	do.
145 (5)	Failure to comply with requirements of section 145 by auditors.	Auditors	Rs. 100
153 (4)	Failure to file copy of order passed under section 153 (2) with registrar as prescribed, and annexing copy of the same with memorandum.	Company & Officers	Rs. 10 for each copy.
153A	Default in filing certified copy of order as prescribed.	do.	Rs. 50
154 (4)	Default in filing copy of prospectus etc. with registrar on conversion into public company.	do.	Rs. 500
206 (2)	Default in publishing notice of special or extraordinary resolution for winding up company voluntarily in Official Gazette and in newspaper.	do.	Rs. 50 a day during default.
282.	Making false statement in any return, report, certificate, balance-sheet or other document as required to be made under the Act.	Every person making the same	Imprisonment for 3 years with fine.
282A	Wrongfully withholding property of company.	Directors, Manag- ing Agent, Mana- ger, officer or employee.	Rs. 1000 and delivery of property ; in de- fault imprison- ment for 2 years. Rs. 500
282B (5)	Misapplication of securities furnished by employees.	Directors, Managing ing Agent, Manager & Officers	Rs. 500
283.	Using word "Ltd." without incorporation.	Person so doing.	Rs. 50 a day.

INDIAN REGISTRATION, ACT 1908.

PART I.

Preliminary.

S. 2. In this Act, unless there is anything repugnant in the subject or context :—

(6) "immoveable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass ;

(7) "lease" includes a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease ;

(8) "minor" means a person, who according to the personal law to which he is subject, has not attained majority ;

PART III

Of Registrable Documents.

S. 17. (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act 1871, or the Indian Registration Act 1877, or this Act came or comes into force, namely :

(a) instruments of gift of immovable property,

(b) other non testamentary instruments which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property,

(c) non-testamentary instruments which acknowledge the receipt of payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest, and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent.

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property :

Provided that the Provincial Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

(i) any composition deed, or

(ii) any instrument relating to shares in a joint stock company, notwithstanding that the assets of such company consists in whole or in part of immovable property, or

(iii) any debenture issued by any such company and not creating, declaring, assigning limiting or extinguishing any right, title or interest to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or other-

wise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures, or

(iv) any endorsement upon or transfer of any debenture issued by any such company, or

(v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceeding;

(vii) any grant of immovable property by the Crown, or

(viii) any instrument of partition made by a Revenue Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883, or

(x) any order granting a loan under the Agriculturist Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act, or

(xi) any endorsement on a mortgage deed acknowledging the payment of the whole or any part of the mortgage money and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage, or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.

Explanation.— A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

(3) Authorities to adopt a son, executed after the first day of January, 1872, and not conferred by a will, shall also be registered.

Documents of which
registration is
optional.

S. 18. Any of the following documents may be registered under this Act, namely:—

(a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;

(b) instruments acknowledging the receipt or payment of any consideration, on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

(c) leases of immovable property for any term not exceeding one year, and leases exempted under Section 17;

(cc) instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;

(d) instruments (other than wills which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;

(e) wills, and

(f) all other documents not required by section 17 to be registered.

S. 21. (1) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

Description of property and maps or plans. (2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also whenever it is practicable, by reference to a Government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

PART IV

Of the Time of Presentation

S. 23. Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of the execution.

Time for presenting documents. Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or where it is appealable, within four months from the day on which it becomes final.

S. 23A. Notwithstanding anything to the contrary contained in this Act if in any case a document requiring registration has been accepted for registration by a registrar or sub-registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI, for re-registration in the office of the registrar of the district in which document was originally registered, and upon the registrar being satisfied that the document was so accepted for registration from a person not duly empowered to present the same, he shall proceed to the re-registration of the document as if it had not been previously registered, and as if such presentation for re-registration was a presentation for registration made within the time allowed therefor under Part IV, and all the provisions of the Act, as to registration of documents, shall apply to such re-registration and such document, if duly re-registered in accordance with the provisions of this section, shall be deemed to have been duly registered for all purposes from the date of its original registration :

Re-registration of certain documents. Provided that, within three months from the twelfth day of September, 1917, any person claiming under a document to which this section applies may present the same or cause the same to be presented for re-registration in accordance with this section, whatever may have been the time when he first became aware that the registration of the document was invalid.

S. 25 (1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a sub-registrar, who shall forthwith forward it to the registrar to whom he is subordinate.

S. 26. When a document purporting to have been executed by all or any of the parties out of British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer if satisfied :—

(a) that the instrument was so executed; and

(b) that it has been presented for registration within four months after its arrival in British India, may on payment of the proper registration fee, accept such document for registration.

PART V.

Of the place of Registration

S. 28. Save as in this part otherwise provided, every document mentioned in S. 17, sub-section (1), clauses (a), (b), (c), (d) and (e), section 17, sub-section (2) in so far as such document affects immoveable property, and section 18, clauses (a), (b), (c), and (cc), shall be presented for registration in the office of a sub-registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

S. 30. (1) Any registrar may in his discretion receive and register any document which might be registered by any sub-registrar subordinate to him.

(2) The registrar of a district including a presidency town and the registrar of the Lahore District may receive and register any document referred to in section 28 without regard to the situation in any part of British India of the property to which the document relates.

PART VI.

Of presenting document for Registration

S. 32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office :—

(a) by some person executing or claiming under the same, or in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assign of such person, or

(c) by the agent of such person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.

S. 33. (1) For the purposes of section 32, the following powers-of-attorney shall alone be recognised, namely —

powers-of-attorney re-
cognizable for pur-
poses of section 32.

(a) if the principal at the time of executing the power-of-attorney resides in any part of British India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the registrar, or sub-registrar within whose district or sub-district the principal resides.

(b) if the principal at the time aforesaid resides in any other part of British India, a power of attorney executed before and authenticated by any Magistrate.

(c) if the principal at the time aforesaid does not reside in British India, a power of attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice Consul, or representative, of His Majesty or of the Central Government.

Provided that the following persons shall not be required to attend at any registration office or Court for the purposes of executing any such power of attorney as is mentioned in clauses (a) and (b) of this section, namely:—

(i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend,

(ii) persons who are in jail under civil or criminal process, and

(iii) persons exempt by law from personal appearance in Court.

(2) In the case of every such person the registrar or sub-registrar or Magistrate, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the registrar or sub-registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power of attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

PART X

Of the effects of Registration and non-registration.

Time from which regis-
tered document opera-
tes.

S. 47. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from time of its registration.

S. 48. All non-testamentary documents duly registered under this Act and relating to any property whether moveable or immoveable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession and the same constitutes a valid transfer under any law for the time being in force.

Provided that a mortgage by deposit of title deeds as defined in section 58 of the Transfer of Property Act, 1882, shall take effect against any mortgage deed subsequently executed and registered which relates to the same property.

Effect of non-registration of documents required to be registered.

S. 49. No document required by section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall,

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered.

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under chapter II of the Specific Relief Act 1877, or as evidence of any collateral transaction not required to be effected by registered instrument.

S. 50. (1) Every document of the kinds mentioned in clauses (a), (b), (c) and (d) of section 17, sub-section (1) and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

Certain registered documents relating to land to take effect against unregistered documents.

(2) Nothing in sub-section (1) applies to leases exempted under the proviso to sub-section (1) of section 17 or to any document mentioned in sub-section (2) of the same section, or to any registered document which had not priority under the law in force at the commencement of this Act.

Explanation.—In cases where Act No. XVI of 1864 or the Indian Registration Act, 1866, was in force in the place and at the time in and at which such unregistered document was executed, “unregistered” means not registered according to such Act, and, where the document is executed after first day of July, 1871, not registered under the Indian Registration Act, 1871 or the Indian Registration Act 1877, or this Act.

PART XI

Of the Duties and Powers of Registering Officers.

S. 60. (1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word “registered” together with the number and page of the book in which the document has been copied.

Certificate of registration.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

(c) Special Duties of Sub-Registrar.

S. 64. Every sub-registrar on registering a non-testamentary document relating to immovable property not wholly situate in his own sub-district shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other sub-registrar subordinate to the same registrar as himself in whose sub-district any part of such property is situate, and such sub-registrar shall file the memorandum in his Book No. I.

Procedure where document relates to land in several sub-districts.

PART XII

Of Refusal to Register.

S. 71. (1) Every sub-registrar refusing to register a document except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2 and endorse the words "registration refused" on the document, and on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded. (2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

S. 72. (1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against any order of sub-registrar refusing to admit document to registration (whether the registration of such document is compulsory or optional) to the registrar to whom such sub-registrar is subordinate, if presented to such registrar within thirty days from the date of the order, and the registrar may reverse or alter such order.

(2) If the order of the registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the sub-registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

S. 73. (1) When a sub-registrar has refused to register a document on the ground that any person by whom it purports to be executed or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorised as aforesaid, may, within thirty days, after the making of the order of refusal, apply to the Registrar to whom such sub-registrar is subordinate in order to establish his right to have the document registered.

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71 and the statements in the application shall be verified by the applicant in manner required by law for verification of plaints.

S. 74. In such case, and also where such denial as aforesaid is made before a registrar in respect of a document presented for registration to him, the registrar shall, as soon as conveniently may be, enquire—

(a) whether the document has been executed,

(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, as to entitle the document to registration.

S. 75. (1) If the registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

(2) If the document is duly presented for registration within thirty days

after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) The registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence, as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908.

Order of refusal by Registrar S 76 (1) Every Registrar refusing—

(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a sub-registrar, or

(b) to direct the registration of document under section 72 or section 75, shall make an order of refusal and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him copy of the reasons so recorded.

(2) No appeal lies from any order by a registrar under this section or section 72.

S. 77. (1) Where the registrar refuses to order the document to be registered, under section 72 or section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of section 75 shall *statu mutandis*, apply to all documents presented for registration in accordance with any such decree, and notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

PART XIV.

OF PENALTIES.

Penalty for making false statements, delivering false copies or translations, false personation and abetment

S. 82. Whoever—

(a) Intentionally makes any false statement, whether on oath, or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act, or

(b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of document, or a false copy of a map or plan, or

(c) falsely personates another, and in such assumed character presents any document or makes any admission or statement, or causes any summon or commission to be issued, or does any other act in any proceeding or enquiry under this Act, or

(d) abets anything made punishable by this Act, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

PART XV.

MISCELLANEOUS.

S. 88 (1) Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator General of Bengal, Madras, or Bombay or for any Official Trustee or Official Assignee or for the Sheriff, Receiver or Registrar of a High Court, to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58.

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to any Secretary to Government, or to such officer of Government, Administrator General, Official Trustee, Official Assignee, Sheriff, Receiver or Registrar, as the case may be, for information respecting the same, and on being satisfied of the execution thereof, shall register the instrument.



CHAPTER X

Description of Instrument and Proper Stamp Duty

Description of Instrument.

Proper Stamp-duty.

Art. 1. Acknowledgment, of a debt exceeding twenty rupees in amount or value, written or signed by or on behalf, of a debtor in order to supply evidence of such debt in any book (other than a banker's pass book) or on a separate piece of paper when such book or paper is left in the creditor's possession: provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property.

India, Assam, Bengal, Punjab, Bombay, U. P.—One Anna
Bihar, C. P. and Berar, Burma—Two annas.
Madras—One and a half anna.

4. Affidavit, including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing.

India—*Re.* One.
Assam, Bengal, Bihar, Bombay, Burma, C. P. and Berar, Orissa, Punjab, U. P.—Rs. Two.
Madras—Rs. Three.

Exemptions.

Affidavit or declaration in writing when made:—

- (a) as a condition of enrolment under the Indian Army Act, 1911, or the Indian Air Force Act, 1932, (for *Bengal, Madras, Punjab* and *U. P.*, delete the last words 'or the Indian Air Force Act, 1932,' and for '*Burma* insert the words 'or the Burma Army Act,' after the words Indian Army Act, 1911),
- (b) for the immediate purpose of being filed or used in any court or before the officer of any court; or
- (c) for the sole purpose of enabling any person to receive any pension or charitable allowance.

5. Agreement or memorandum of an agreement:—

- (a) if relating to the sale of a bill of exchange;
- (b) if relating to the sale of a Government security or share in an incorporated company or other body corporate.

India—Annas two.
Assam, Bengal, Burma, Punjab,—Annas four.
Bihar, C. P. and Berar, Orissa, U. P.—Annas Three.
Madras—Annas six.
India—Subject to a maximum of ten rupees, one anna for every Rs. 10,000 or part thereof of the value of the security or share.

Description of Instrument	Proper Stamp-duty
(c) if not otherwise provided for.	<p><i>Assam Bengal</i>—(i) if relating to the sale of a Government security ;—subject to a maximum of twenty rupees, two annas for every Rs. 10,000 or part thereof, of the value of the security</p> <p>(ii) if relating to the sale of a share in an incorporated company or other body corporate ;—Two annas for every Rs. 5,000 or part thereof, of the value of the share.</p> <p><i>Burma</i>—Subject to a maximum of Rs. 20, two annas for every Rs. 10,000 or part thereof of the value of the security or share.</p> <p><i>Bihar, C. P. and Berar, U. P.</i>—Subject to a maximum of Rs 15, one and half annas for every Rs. 10,000 or part thereof of the value of the security or share.</p> <p><i>Madras</i>—Subject to a maximum of thirty rupees, three annas for every rupees 10,000 or part thereof of the value of the security or share</p> <p><i>Punjab</i>—Subject to a maximum of Rs. 15, two annas for every Rs. 10,000 or part thereof of the value of the security or share.</p> <p><i>India</i>—Annas eight.</p> <p><i>Assam, Bengal, Bombay, Burma, Punjab</i>—Rupee one.</p> <p><i>Bihar, C. P. and Berar, Orissa, U. P.</i>—Annas twelve.</p> <p><i>Madras</i>—One rupee and eight annas.</p>
<i>Exemptions.</i>	
Agreement or memorandum of agreement :—	
<p>(a) for or relating to the sale of goods or merchandise exclusively, not being a Note or Memorandum chargeable under No. 43.</p> <p>(b) made in the form of tenders to the Central Government for or relating to any loan :</p> <p>(c) made under the European Vagrancy Act, 1874, section 17.</p>	
The Bombay article is as follows :—	
<p>(a) if relating to the sale of a bill of exchange ;</p> <p>(aa) if relating to the purchase or sale of a Government security ;</p> <p>(b) If relating to the purchase or sale of shares, scrips, stocks, bonds, debentures, debenture stocks, or any other marketable security of a like nature in or of any incorporate company or other body corporate;</p>	<p>Four annas.</p> <p>Subject to a maximum of Rs. 20, two annas for every Rs. 10,000 or part thereof of the value of the security at the time of its purchase or sale as the case may be.</p> <p>Two annas for every Rs. 5,000 or part thereof of the value of the security at the time of the purchase or sale as the case may be.</p>

Description of Instrument	Proper Stamp-duty
(c) if not otherwise provided for.	One Rupee
Bombay Exemptions.	
(a) For or relating to purchase or sale of goods or merchandise exclusively not being a Note or Memorandum chargeable under (No. 43).	
(b) made in the form of tenders to the Central Government for or relating to any loan ;	
(c) made under the European Vagrancy Act, 1874, section 17 ;	
(d) made in respect of the purchase or sale of a Government security or of a share, scrip, stock, bond, debenture, debenture stock or other marketable security of a like nature in or of any incorporate company or other body corporate an entry relating to which is required to be made in a clearance list in accordance with the rules of a stock exchange recognised under the Bombay Securities Contracts Control Act, 1925.	
<i>Burma.</i> In the Act, as adapted to Burma for the word "India" substitute "Burma "	
6. Agreement relating to deposit of Title-deeds, Pawn or Pledge, that is to say, any instrument evidencing an agreement relating to—	
(1) The deposit of title-deeds or instruments constituting or being evidence of the title to any property, whatever (other than a marketable security), or	
(2) the pawn or pledge of moveable property, where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt,—	

Indian — The same duty as a Bill of Exchange for the amount secured.

(a) If such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement.

	Assam,* Bengal,* Punjab,* Orissa, Bihar, C. P. & Berar.			*Madras.			U. P.
	If drawn singly	If drawn in set of two for each part of the set		If drawn singly	If drawn in set of three for each part of the set		
		drawn	in set of two for each part of the set		drawn	in set of three for each part of the set	
(i) When the amount of the loan or debt does not exceed ...	100	0 3 0	0 2 0	0 1 0			
(ii) When the amount of the loan or debt exceeds Rs. 100 but does not exceed ...	200	0 4 6	0 3 0	0 1 6	0 9 0	0 6 0	0 3 0
(iii) When it exceeds Rs. 200 but does not exceed Rs. 400	400	0 9 0	0 4 6	0 3 0	1 2 0	0 9 0	0 6 0
When it exceeds Rs. 400 but does not exceed Rs. 600	600	0 13 6	0 7 6	0 4 6	1 11 0	0 15 0	0 9 0
Do. do. 600	800	1 2 0	0 9 0	0 6 0	2 4 0	1 2 0	0 12 0
Do. do. 800	1,000	1 6 6	0 12 0	0 7 6	2 13 0	1 8 0	0 15 0
Do. do. 1,000	1,200	1 11 0	0 13 6	0 9 0	3 6 0	1 11 0	1 2 0
Do. do. 1,200	1,600	2 4 0	1 2 0	0 12 0	4 8 0	2 4 0	1 8 0
Do. do. 1,600	2,500	3 6 0	1 11 0	1 2 0	6 12 0	3 6 0	2 4 0
Do. do. 2,500	5,000	6 12 0	3 6 0	2 4 0	13 8 0	6 12 0	4 8 0
Do. do. 5,000	7,500	10 2 0	5 1 0	3 6 0	20 4 0	10 2 0	6 12 0
Do. do. 7,500	10,000	13 8 0	6 12 0	4 8 0	27 0 0	13 8 0	9 0 0
Do. do. 10,000	15,000	20 4 0	10 2 0	6 12 0	40 8 0	20 4 0	13 8 0
Do. do. 15,000	20,000	27 0 0	13 8 0	9 0 0	54 0 0	27 0 0	18 0 0
Do. do. 20,000	25,000	33 12 0	16 14 0	11 4 0	57 8 0	33 12 0	22 8 0
Do. do. 25,000	30,000	40 8 0	20 4 0	13 8 0	81 0 0	40 8 0	27 0 0
And for every additional Rs. 10,000 or part thereof in excess of ...	30,000	13 8 0	6 12 0	4 8 0	27 0 0	13 8 0	9 0 0

* For Assam, Bengal, Punjab, Madras delete (i) and for (ii) and (iii) substitute (i) & (ii) respectively and read in new (i) 'when the amount of the loan or debt does not exceed Rs. 200'; for U. P. there is no (i), (ii) and (iii) and instead of 'old (ii) read 'when the amount of the loan or debt does not exceed Rs. 200'.

Description of Instrument	Proper Stamp-duty
(b) If such loan or debt is repayable not more than three months from the date of such instrument.	<p><i>India</i>—Half the duty payable on the Bill of Exchange for the amount secured.</p> <p><i>Assam, Bengal, Madras,* Punjab, Orissa</i> half the duty payable on a loan or debt under clause (a) (i) or clause (a) (ii) for the amount secured.</p> <p><i>Bihar, C. P. & Berar</i>—half the duty payable on a loan or debt under clause (a) (i), clause (a) (ii) or clause (a) (iii) for the amount secured.</p> <p><i>U. P.</i>—half the duty payable on a loan or debt under clause (a) for the amount secured.</p>
7. Appointment in execution of a power, whether of trustees or of property moveable or immoveable where made by writing not being a will.	<p><i>India</i>—Rupees fifteen.</p> <p><i>Assam, Bengal, Bihar, C. P. & Berar, Orissa, Punjab</i>—Rupees Twenty-five.</p> <p><i>Madras</i>,—Thirty-seven rupees, eight annas.</p> <p><i>Bombay, Burma</i>,—(a) Of trustees—Rupees fifteen.</p> <p>(b) Of property moveable or immoveable—Rupees thirty.</p> <p><i>U. P.</i>—(a) where the value of the property does not exceed Rs. 1,000—Rupees fifteen</p> <p>(b) In any other case—Rupees Twenty-five.</p>
8. Appraisement or valuation, made otherwise than under an order of the court in the course of a suit :— (a) Where the amount does not exceed Rs. 1,000.	<p><i>India, Bihar, Bombay, U. P.</i>—The same duty as a Bond for such amount.</p> <p><i>Assam, Bengal, Madras, Orissa, Punjab</i>—The same duty as a Bottomry Bond for such amount.</p> <p><i>India</i>—Rupees Five.</p> <p><i>Bengal, Bihar, Burma, C. P. & Berar, Orissa</i></p> <p><i>U. P.</i>—Rupees Seven annas eight.</p> <p><i>Assam, Bengal, Bombay, Punjab</i>—Rupees Ten.</p> <p><i>Madras</i>—Fifteen rupees.</p>
Exemption	
(a) Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.	
(b) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.	

* In the case of Madras, add the following :—

Stamp duty of a quarter anna shall be reckoned as half anna and three quarters anna as one anna.

Description of Instrument.	Proper Stamp-duty.
<p>10. Articles of Association of a Company.</p> <p><i>Exemption.</i></p> <p>Articles of any Association not formed for profit and registered under section 26 of the Indian Companies Act, 1913.</p> <p>See also Memorandum of Association of a Company (No. 39).</p> <p>11. Articles of Clerkship, or contract whereby any person first becomes bound to serve as a clerk in order to secure his admission as an attorney in any High Court.</p> <p>Assignment, See Conveyance, Transfer and Transfer of Lease, as the case may be.</p> <p>Attorney. See Entry as an Attorney and Power-of-Attorney.</p> <p>12. Award, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit,—</p>	<p><i>India—</i> Rupees Twenty-five.</p> <p><i>Nssam, Bihar, C. P. and Berar, Orissa, U. P.</i> Rupees fifty.</p> <p><i>Bombay, Burma (a)—</i>Where the company has no share capital or the nominal share capital does not exceed Rs. 2 500..... Rupees Twenty-five.</p> <p><i>(b) Where the nominal share capital exceeds Rs. 2,500 but does not exceed Rs. 1,00,000</i> Rupees fifty.</p> <p><i>(c) where the nominal share capital exceeds Rs. 1,00,000—</i>Rupees One Hundred</p> <p><i>Madras—</i>One hundred rupees</p> <p><i>Punjab—(a) Where the authorised capital does not exceed Rupees one lakh.....</i> Rupees Twenty-five</p> <p><i>(b) In other case...Rupees fifty.</i></p> <p><i>Bengal.....(a) Where the nominal share capital does not exceed one lakh of rupees—</i>Rupees Fifty.</p> <p><i>(b) Where the nominal share capital exceeds one lakh of rupees—</i>Rupees one hundred</p> <p><i>India, Assam, Bengal, Bihar, Burma, C. P. and Berar, Punjab, Orissa, U. P.....Rupees</i> Two Hundred and fifty.</p> <p><i>Madras—</i>Rupees Three hundred and seventy-five</p>

Description of Instrument.	Proper Stamp-duty.
(a) Where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000.	<p><i>India, Assam, Bengal, Bihar, C. P. & Berar, Punjab, and U P.</i>—The same duty as a Bond for such amount.</p> <p><i>Madras, Orissa</i>—The same duty as a Bottomry Bond for such amount.</p> <p><i>Bombay</i>—The same duty as a Bond for the amount or value of a property to which the award relates as set forth in such award, subject to a maximum of Rs. 20.</p>
(b) In any other case	<p><i>India</i>—Rs. Five.</p> <p><i>Bihar, C.P., Berar, Punjab, and U.P....</i> If it exceeds Rs. 1, 000 but does not exceed Rs. 5,000—Rupees Seven annas eight.</p> <p>And for every additional Rs. 1,000 or part thereof in excess of Rs 5,000—Eight annas subject to a maximum of Rs. fifty.</p> <p><i>U. P.</i> omits the maximum of Rs. fifty.</p> <p><i>Assam, Bengal, Orissa</i>—If it exceeds Rs. 1,000 but does not exceed Rs. 5,000—Rupees Ten.</p> <p>And for every additional Rs. 1000 or part thereof in excess of Rs. 5,000—Eight annas subject to a maximum of Rs. fifty</p> <p><i>Madras...</i> If it exceeds Rs. 1000 but does not exceed Rs. 5000—Rupees One Hundred.</p> <p>And for every additional Rs. 1000 or a part thereof in excess of Rs. 5,000—One rupee subject to a maximum of one hundred rupees</p> <p><i>Bombay</i>—The same as under (a).</p> <p><i>Burma</i>—(a) Where the amount or value of the property as set forth in such award does not exceed Rs. 1,000—Eight annas for each Rs. 100 or part thereof subject to a minimum of two rupees eight annas.</p> <p>(b) Where it exceeds Rs. 1,000 and does not exceed Rs. 1,500—Seven rupees eight annas.</p> <p>(c) Where it exceeds Rs. 1,500 and does not exceed Rs. 2,000—Ten Rupees.</p> <p>(d) For every additional Rs. 500 or part thereof in excess of Rs. 2,000—One rupee subject to a maximum of Rupees fifty.</p>
<p><i>Exemption</i> Award under the Bombay District Municipal Act, 1901, section 160 or the Bombay Hereditary Offices Act, 1874, Sec. 18.</p>	

Omitted by Act V 1927. It read "when payable on demand" and the duty was "One anna".

Description of Instrument.	Proper Stamp-duty.
14. Bill of lading, including a through bill of lading.	<i>India, Bihar, C. P. & Berar, Orissa, U. P. — Four annas.</i> <i>Assam, Bombay, Punjab—Eight annas.</i> <i>Bengal, Burma, Madras.—Six annas.</i> <i>N. B. — If a bill of lading is drawn in parts, the proper stamp must be borne by each one of the set.</i>
<i>Exemptions.</i>	
<p>(a) Bill of lading when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1889* and are to be delivered at another place within the limits of the same port.</p> <p>(b) Bill of lading when executed out of British India and relating to property to be delivered in British India.</p>	
15. Bond, as defined by section 2 (5) not being a Debenture No. 27) and not being otherwise provided for by this Act or by Court Fees Act, 1870,—	
Where the amount or value secured does not exceed Rs. 10.	<i>India—Annas two.</i> <i>Assam, Bengal, Bihar, Bombay, Burma, C. P., and Berar, Orissa, Punjab, U.P. Annas two.</i> <i>Madras—Four annas.</i>
Where it exceeds Rs. 10 and does not exceed Rs. 50.	<i>India—Annas four.</i> <i>Assam, Bengal, Bihar, Bombay, Burma, C. P. and Berar, Orissa, Punjab, U. P.—Annas four.</i>
Where it exceeds Rs. 50 and does not exceed Rs. 100.	<i>Madras—Eight annas.</i> <i>India—Annas eight.</i> <i>Assam, Bengal, Bombay, Burma, C. P. and Berar, Orissa, Punjab, U. P.—Annas eight.</i>
Where it exceeds Rs. 100 and does not exceed Rs. 200.	<i>Bihar—Annas ten.</i> <i>Madras—One rupee.</i> <i>India—Rupee one.</i>
Where it exceeds Rs. 200 and does not exceed Rs. 300.	<i>Bihar, Burma, Orissa—Rupee one annas four.</i> <i>Assam, Bengal, Bombay, C. P. and Berar, Punjab, U. P.—Rupee one.</i> <i>Madras—Two rupees eight annas.</i> <i>India, C. P. and Berar—Rupee one annas eight.</i> <i>Assam, Bihar, Bombay, Burma—Rupees two annas four.</i> <i>Bengal, Orissa, Punjab—Rupee one annas fourteen.</i> <i>U. P.—Rupee one annas ten.</i> <i>Madras—Three rupees twelve annas.</i>

*New Act XV of 1908.

Description of Instrument.	Proper Stamp-duty.
Where it exceeds Rs. 300 and does not exceed Rs. 400.	<i>India</i> —Rupees two. <i>Assam, Bengal, Bihar, Bombay, Burma</i> —Rupees three. <i>U. P.</i> —Rupees two annas four. <i>C. P. and Berar, Orissa, Punjab</i> —Rupees two annas eight.
Where it exceeds Rs. 400 and does not exceed Rs. 500.	<i>Madras</i> —Five rupees <i>India</i> —Rupees two annas eight. <i>Assam, Bengal, Bihar, Bombay, Burma</i> —Rupees three annas twelve. <i>Orissa, Punjab</i> —Rupees three annas two <i>U. P.</i> —Rupees two annas fourteen. <i>C. P. and Berar</i> —Rupees three annas eight. <i>Madras</i> —Six rupees four annas.
Where it exceeds Rs. 500 and does not exceed Rs. 600.	<i>India</i> —Rupees three. <i>Assam, Bengal, Bihar, Bombay, Burma, C. P. and Berar, Orissa, Punjab, U. P.</i> —Rupees four annas eight. <i>Madras</i> —Nine rupees.
Where it exceeds Rs. 600 and does not exceed Rs. 700.	<i>India</i> —Rupees three annas eight. <i>U. P.</i> —Rupees four. <i>Assam, Bengal, Bihar, Bombay, Burma, C. P. and Berar, Orissa, Punjab, U. P.</i> —Rupees five annas four.
Where it exceeds Rs. 700 and does not exceed Rs. 800.	<i>Madras</i> —Ten rupees eight annas. <i>India</i> —Rupees four. <i>Assam, Bengal, Bihar, Bombay, Burma, C. P. and Berar, Orissa, Punjab, U. P.</i> —Rupees six. <i>Madras</i> —Twelve rupees.
Where it exceeds Rs. 800 and does not exceed Rs. 900.	<i>India</i> —Rupees four annas eight. <i>Assam, Bengal, Bihar, Bombay, Burma, C. P. and Berar, Orissa, Punjab, U. P.</i> —Rupees six annas twelve. <i>Madras</i> —Thirteen rupees eight annas.
Where it exceeds Rs. 900 and does not exceed Rs. 1,000.	<i>India</i> —Rupees five. <i>Assam, Bengal, Bihar, Bombay, Burma, C. P. and Berar, Orissa, Punjab, U. P.</i> —Rupees seven annas eight. <i>Madras</i> —Fifteen rupees.
And for every Rs. 500 or part thereof in excess of Rs. 1,000.	<i>India</i> —Rupees two annas eight. <i>Assam, Bengal, Bihar, Bombay, Burma, C. P. and Berar, Orissa, Punjab, U. P.</i> —Rupees three annas twelve. <i>Madras</i> —Seven rupees eight annas.
See Administration Bond. Bottomry Bond. Customs Bond. Indemnity Bond. Respondentia Bond. Security Bond.	
<i>Exemptions.</i>	
Bonds when executed by:—	

Description of Instrument.	Proper Stamp-duty																																																								
<p>(a) headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, Section 99 for the due performance of their duties under that Act.</p> <p>(b) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.</p>																																																									
<p>16. Bottomry-Bond, that is to say any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage.</p>	<p><i>India, Bihar, Bombay, C. P. & Berar, Burma, U. P.</i>—The same duty as a Bond (No. 15) for the same amount.</p> <p><i>Assam, Bengal, Orissa, Punjab</i> :—</p> <table> <tr> <td></td> <td>Rs.</td> <td>a.</td> <td>p.</td> </tr> <tr> <td>where the amount or value secured does not exceed Rs. 10</td> <td>...</td> <td>0</td> <td>3 0</td> </tr> <tr> <td>where it exceeds Rs. 10 and does not exceed Rs. 50</td> <td>...</td> <td>0</td> <td>6 0</td> </tr> <tr> <td>where it exceeds Rs. 50 and does not exceed Rs. 100</td> <td>...</td> <td>0</td> <td>12 0</td> </tr> <tr> <td>where it exceeds Rs. 100 and does not exceed Rs. 200</td> <td>...</td> <td>1</td> <td>8 0</td> </tr> <tr> <td>where it exceeds Rs. 200 and does not exceed Rs. 300</td> <td>...</td> <td>2</td> <td>4 0</td> </tr> <tr> <td>where it exceeds Rs. 300 and does not exceed Rs. 400</td> <td>...</td> <td>3</td> <td>0 0</td> </tr> <tr> <td>where it exceeds Rs. 400 and does not exceed Rs. 500</td> <td>...</td> <td>3</td> <td>12 0</td> </tr> <tr> <td>where it exceeds Rs. 500 and does not exceed Rs. 600</td> <td>...</td> <td>4</td> <td>8 0</td> </tr> <tr> <td>where it exceeds Rs. 600 and does not exceed Rs. 700</td> <td>...</td> <td>5</td> <td>4 0</td> </tr> <tr> <td>where it exceeds Rs. 700 and does not exceed Rs. 800</td> <td>...</td> <td>6</td> <td>0 0</td> </tr> <tr> <td>where it exceeds Rs. 800 and does not exceed Rs. 900</td> <td>...</td> <td>6</td> <td>12 0</td> </tr> <tr> <td>where it exceeds Rs. 900 and does not exceed Rs. 1000</td> <td>...</td> <td>7</td> <td>8 0</td> </tr> <tr> <td>Every Rs. 500 or part thereof in excess of Rs. 1000</td> <td>...</td> <td>3</td> <td>12 0</td> </tr> </table> <p><i>Madras</i>.—The duty is double than that given over here for each amount stated.</p>		Rs.	a.	p.	where the amount or value secured does not exceed Rs. 10	...	0	3 0	where it exceeds Rs. 10 and does not exceed Rs. 50	...	0	6 0	where it exceeds Rs. 50 and does not exceed Rs. 100	...	0	12 0	where it exceeds Rs. 100 and does not exceed Rs. 200	...	1	8 0	where it exceeds Rs. 200 and does not exceed Rs. 300	...	2	4 0	where it exceeds Rs. 300 and does not exceed Rs. 400	...	3	0 0	where it exceeds Rs. 400 and does not exceed Rs. 500	...	3	12 0	where it exceeds Rs. 500 and does not exceed Rs. 600	...	4	8 0	where it exceeds Rs. 600 and does not exceed Rs. 700	...	5	4 0	where it exceeds Rs. 700 and does not exceed Rs. 800	...	6	0 0	where it exceeds Rs. 800 and does not exceed Rs. 900	...	6	12 0	where it exceeds Rs. 900 and does not exceed Rs. 1000	...	7	8 0	Every Rs. 500 or part thereof in excess of Rs. 1000	...	3	12 0
	Rs.	a.	p.																																																						
where the amount or value secured does not exceed Rs. 10	...	0	3 0																																																						
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Every Rs. 500 or part thereof in excess of Rs. 1000	...	3	12 0																																																						

Description of Instrument.	Proper Stamp-duty.
<p>17. Cancellation. Instrument of (including any instrument by which any instrument previously executed is cancelled, if attested and not otherwise provided for. See also Release, Revocation of Settlement, Surrender of lease, Revocation of Trust.</p>	<p><i>Ind'ia</i>—Rupees five. <i>Assam, Bengal, Burma, Orissa, Punjab, U. P.</i> Rupees seven annas eight <i>Bihar, C. P. and Berar</i>—Ten rupees. <i>Madras</i>—fifteen rupees.</p>
<p>18. Certificate of Sale. (In respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue Officer—</p>	<p><i>India, U. P.</i>—Annas two <i>Assam, Bengal, Bombay, Burma</i>—Annas four. <i>Bihar, C. P. and Berar, Orissa, Punjab</i>—Annas three. <i>Madras</i>—Six annas.</p>
<p>(a) Where the purchase money does not exceed Rs. 10;</p>	<p><i>India, U. P.</i>—Annas four. <i>Assam, Bengal, Bombay, Burma</i>—Annas eight <i>Bihar, C. P. and Berar, Orissa, Punjab</i>—Annas six. <i>Madras</i>—Twelve annas.</p>
<p>(b) Where the purchase exceeds Rs. 10 but does not exceed Rs. 25;</p>	<p><i>India, Assam, Bengal, Bihar, Burma, C. P. and Berar, Madras, Orissa, Punjab, U. P.</i>—The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the purchase money only.</p>
<p>(c) In any other case</p>	<p>The city of <i>Bombay</i>, the city of <i>Poona</i>, <i>Ahmedabad</i>, and any other city notified, other urban area notified:—The same duty as is leviable on a Conveyance (No. 23) under the Bombay finance (Amendment) Act, 1932 as amended from time to time, for a consideration equal to the amount of the purchase money only.</p>
<p>19. Certificate or other document evidencing the right or title of the holder thereof, or any other person either to any shares scrip or stock in or of any incorporated company or other body corporate, or to become proprietor of shares, scrips or stock in or of any such company or body. See also Letter of Allotment of shares.</p>	<p>Two annas. <i>Madras</i>—Three annas.</p>

Description of Instrument.	Proper Stamp-duty.
22. Composition-deed , that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license for benefit of his creditors.	<i>India</i> —Rupees Ten. <i>Assam, Bengal, Bombay</i> —Rupees Twenty. <i>Punjab, U. P.</i> —Rupees twelve annas eight. <i>Bihar, Burma, C. P. and Berar, Orissa</i> —Fifteen rupees. <i>Madras</i> —Twenty-two rupees annas eight.
23. Conveyance , as defined by Section 2 (10) not being a Transfer charged or exempted under No. 62,—	Rs. a. p.
where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs. 50.	<i>India, C. P. and Berar, U. P.</i> ... 0 8 0 <i>Assam, Bengal, Bihar, Orissa, Punjab</i> ... 0 12 0 <i>Madras</i> ... 1 8 0
where it exceeds Rs. 50 but does not exceed Rs. 100	<i>India, C. P. & Berar, U. P.</i> ... 1 0 0 <i>Assam, Bengal, Bihar, Orissa, Punjab</i> ... 1 8 0 <i>Madras</i> ... 3 0 0
where it exceeds Rs. 100 but does not exceed Rs. 200.	<i>India, C. P. & Berar, U. P.</i> ... 2 0 0 <i>Assam, Bengal, Bihar, Burma, Orissa, Punjab</i> ... 3 0 0 <i>Madras</i> ... 2 8 0 <i>Madras</i> ... 6 0 0
where it exceeds Rs. 200 but does not exceed Rs. 300.	<i>India</i> ... 3 0 0 <i>Assam, Bengal, Bihar, Bombay, Burma, Orissa, Punjab</i> ... 4 8 0 <i>U. P.</i> ... 3 4 0 <i>C. P. & Berar</i> ... 3 8 0 <i>Madras</i> ... 9 0 0
where it exceeds Rs. 300 but does not exceed Rs. 400.	<i>India</i> ... 4 0 0 <i>Assam, Bengal, Bihar, Bombay, Burma, Orissa, Punjab</i> ... 6 0 0 <i>U. P.</i> ... 4 8 0 <i>C. P. & Berar</i> ... 5 8 0 <i>Madras</i> ... 12 0 0
where it exceeds Rs. 400 but does not exceed Rs. 500.	<i>India</i> ... 5 0 0 <i>Assam, Bengal, Bihar, Bombay, Burma, C. P. & Berar, Orissa, Punjab</i> ... 7 8 0 <i>U. P.</i> ... 5 12 0 <i>Madras</i> ... 15 0 0
where it exceeds Rs. 500 but does not exceed Rs. 600.	<i>India</i> ... 6 0 0 <i>Assam, Bengal, Bihar, Bombay, Burma, C. P. and Berar, Orissa, Punjab, U. P.</i> ... 9 0 0 <i>Madras</i> ... 18 0 0

Description of Instrument.	Proper Stamp-duty.
where it exceeds Rs. 600 but does not exceed Rs. 700.	<i>India</i> ... 7 0 0 <i>Assam, Bengal, Bihar, Bombay, Burma, C. P. & Berar, Orissa, Punjab, U. P.</i> ... 10 8 0 <i>Madras</i> ... 21 0 0
where it exceeds Rs. 700 but does not exceed Rs. 800.	<i>India</i> ... 8 0 0 <i>Assam, Bengal Bihar, Bombay, Burma, C. P. & Berar, Orissa, Punjab, U. P.</i> ... 12 0 0 <i>Madras</i> ... 24 0 0
where it exceeds Rs. 800 but does not exceed Rs. 900.	<i>India</i> ... 9 0 0 <i>Assam, Bengal, Bihar, Bombay, Burma, C. P. & Berar, Orissa, Punjab, U. P.—</i> ... 13 8 0 <i>Madras</i> ... 27 0 0
where it exceeds Rs. 900 but does not exceed Rs. 1,000.	<i>India</i> ... 10 0 0 <i>Assam, Bengal, Bihar, Bombay, Burma, C. P. & Berar, Orissa, Punjab, U. P.</i> ... 15 0 0 <i>Madras</i> ... 30 0 0
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	<i>India</i> ... 5 0 0 <i>Assam, Bengal, Bihar, Bombay, Burma, C. P. & Berar, Orissa, Punjab, U. P.</i> ... 7 8 0 <i>Madras</i> ... 15 0 0
<i>Exemptions.</i>	
Assignment of copyright by entry made under the Indian Copyright Act, 1847* section 5.	
Bombay Cities and Urban areas (under Bombay Acts II of 1926 and II of 1932)—	
where it exceeds Rs. 200 but does not exceed Rs. 300.	City of Bombay ... 10 0 0 Cities of Ahmedabad, Poona, and any other city notified ... 7 8 0 Other urban area notified ... 4 8 0
where it exceeds Rs. 300 but does not exceed Rs. 400.	City of Bombay ... 14 0 0 Cities of Ahmedabad, Poona and any other city notified ... 10 8 0 Other urban area notified ... 6 0 0
where it exceeds Rs. 400 but does not exceed Rs. 500.	City of Bombay ... 18 0 0 Cities of Ahmedabad, Poona and any other city notified ... 13 8 0 Other urban area notified ... 7 8 0
where it exceeds Rs. 500 but does not exceed Rs. 600.	City of Bombay ... 22 0 0 Cities of Ahmedabad, Poona and any other city notified ... 16 8 0 Other urban area notified ... 9 0 0
where it exceeds Rs. 600 but does not exceed Rs. 700.	City of Bombay ... 26 0 0 Cities of Ahmedabad, Poona and any other city notified ... 19 8 0 Other urban area notified ... 10 8 0

Description of Instrument.	Proper Stamp-duty.
where it exceeds Rs. 700 but does not exceed Rs. 800.	City of Bombay ... 30 0 0 Cities of Ahmedabad, Poona ... and any other city notified ... 22 8 0 Other urban area notified ... 12 0 0
where it exceeds Rs. 800 but does not exceed Rs. 900.	City of Bombay ... 34 0 0 Cities of Ahmedabad, Poona ... and any other city notified ... 25 8 0 Other urban area notified ... 13 8 0
where it exceeds Rs. 900 but does not exceed Rs. 1,000.	City of Bombay ... 38 0 0 Cities of Ahmedabad, Poona and any other city notified ... 28 8 0 Other urban area notified ... 15 0 0
and for every Rs. 500 or part thereof in excess of Rs. 1,000	City of Bombay ... 20 0 0 Cities of Ahmedabad, Poona ... and any other city notified ... 15 0 0 Other urban area notified ... 10 0 0
Co-partnership Deed. See Partnership.	
24. Copy or Extract certified to be a true copy or extract by or by order of any public officer and not chargeable under the law for the time being in force relating to court-fees.	
(i) if the original was not chargeable with duty or if the duty with which it was chargeable does not exceed one rupee.	India—Annas eight. Assam, Bengal, Bombay, Burma—Rupee one. Bihar, C. P. & Berar, Orissa, Punjab—Annas twelve. Madras—One rupee eight annas.
(ii) in any other case.	India—Rupee one. Assam, Bengal, Bombay, Burma—Rupees two. Bihar, C. P. & Berar, Orissa, Punjab*—Rupee one annas eight. Madras—Three rupees.
Exemptions.	
(a) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.	U. P.—(i) If the original was not chargeable with duty or if the duty with which it was chargeable does not exceed Re. 1—Eight annas when the copy or extract is of an agricultural lease or of a mortgage-deed or sale-deed of agricultural land, in any other case twelve annas.
(b) Copy of, or extract from any register relating to births, baptisms, namings, dedications, marriages, (divorces, deaths or burials).	

* For Punjab read (ii) as 'In any other case not falling within the provisions of section 6 A.'

Description of Instrument.	Proper Stamp-duty.
<p>25. Counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid,— (a) if the duty with which the original instrument is chargeable does not exceed one rupee;* (b) in any other case.</p>	<p>(ii) In any other case not falling within the provisions of Section 6-A—One rupee when the copy or extract is of an agricultural lease or a mortgage-deed or sale-deed of agricultural land and the value of the subject-matter of the original does not exceed Rs. 1,000, in any other case one rupee eight annas.</p> <p>The same duty as is payable on the original.</p> <p><i>India</i>—Rupee one. <i>Assam, Bombay, Burma</i>—Rupees two. <i>Punjab, U. P.</i>—In any case not falling within the provisions of Sec. 6-A—Rupee one annas eight, <i>Bengal</i>—Two rupees. <i>Madras</i>—Three rupees. <i>Bihar, C. P. and Berar, Orissa</i>—One rupee eight annas.</p>
<p>Exemption. Counterpart of any lease granted to a cultivator when such lease is exempted from duty.</p>	
<p>27. Debenture (whether a mortgage debenture or not), being a marketable security transferable,— (a) By endorsement or by a separate instrument of transfer; (b) By delivery</p>	<p><i>India, Bihar, C. P. and Berar, U. P., Bombay, Burma</i>—The same duty as a Bond (No. 15) for such amount <i>Assam, Bengal, Orissa, Madras, Punjab</i>—The same duty as a Bottomry Bond (No. 16) for such amount <i>India, Assam, Bihar, Bombay, Burma, C. P. and Berar, Bengal, Orissa, Madras, Punjab</i>—The same duty as a Conveyance (No. 23) for a consideration equal to the face amount of the debenture. <i>U. P.</i>—Where the face amount of the debenture does not exceed Rs. 100—Rs. 1-4-0. Where it exceeds Rs. 100 but does not exceed Rs. 200—Rs. 2-8-0. When it</p>

*For Bengal, Assam, Bombay, read it as two rupees. For Bihar, C. P. & Berar, Orissa, Punjab, U. P. read it as one rupee eight annas. For Madras, read it as three rupees.

Description of Instrument.	Proper Stamp-duty.
<p>(<i>Explanation.</i>)</p> <p>The term "Debenture" includes any interest coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty).</p> <p>(<i>Exemption.</i>)</p> <p>A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage-deed, duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debenture-holders: provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed.</p> <p>See also Bond and sections 8 and 55.</p>	<p>exceeds Rs. 200—The same duty as a Conveyance (No. 23) for a consideration equal to the face amount of the debenture:</p> <p>The city of Bombay, the cities of Ahmedabad, Poona and any other city notified, other urban areas notified—the same duty as was leviable on a Conveyance (No. 23) before the passing of the Bombay Finance Act, 1934, for a consideration equal to the face value of the debenture.</p>
<p>28. Delivery order in respect of goods, that is to say, any instrument entitling any person therein named, or his assigns or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire or upon any wharf, such instrument being signed by or on behalf of the owner of such goods upon the sale or transfers of the property therein, when such goods exceed in value twenty rupees.</p> <p>Deposit of title deeds See Agreement relating to deposit of title deeds, pawn or pledge.</p> <p>Dissolution of Partnership See partnership.</p>	<p>One anna.</p> <p>Madras—One and a half anna.</p>
<p>31. Exchange of property— instrument of.</p>	<p>India, Assam, Bengal, Bihar, Bombay, C. P., and Berar, Madras, Orissa, Punjab, Burma, U. P.—The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property of greatest value as</p>

Description of Instrument.	Proper Stamp-duty.
<p>32. Further charge—instrument of, that is to say, any instrument imposing a further charge on mortgaged property,—</p> <p>(a) When the original mortgage is one of the description referred to in clause (a) of Article No. 40 (that is, with possession);</p> <p>(b) When such mortgage is one of the description referred to in clause (b) of Article No. 40 (that is, without possession)—</p> <p>(i) If at the time of execution of the instrument of further charge possession of the property is given or agreed to be given under such instrument;</p>	<p>set forth in such instrument.</p> <p>The city of Bombay, the cities of Ahmedabad, Poona and any other city notified, other urban areas notified—the same duty as is leviable on a Conveyance (No. 23) under the Bombay Finance Act, 1932, as amended from time to time for a consideration equal to the value of the property of greatest value as set forth in such instrument.</p> <p><i>India, Assam, Bengal, Bihar, Bombay, Burma, C. P. and Berar, Madras, Orissa, Punjab, U. P.</i>—The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the further charge secured by such instrument.</p> <p>The city of Bombay, the cities of Ahmedabad, Poona and any other city notified, other urban area notified—the same duty as is leviable on a Conveyance (No. 23) under the Bombay Finance Act, 1932 as amended from time to time for a consideration equal to the amount of the further charge secured by such instrument.</p> <p><i>India, Assam, Bengal, Bihar, Bombay, Burma, C. P. and Berar, Madras, Orissa, Punjab, U. P.</i>—The same duty as a Conveyance (No. 23) for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge.</p> <p>The city of Bombay, the cities of Ahmedabad, Poona and any other city notified, other urban areas notified—the same duty as is leviable on a Conveyance (No. 23) under the Bombay Finance Act, 1932 as amended from time to time for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge</p>

Description of Instrument.	Proper Stamp-duty.
<p>(ii) if possession is not so given.</p>	<p><i>India, Assam, Bengal, Bihar, Bombay, C. P. and Berar, Punjab, U. P.</i>—The same duty as a Bond (No. 15) for the amount of the further charge secured by such instrument.</p> <p><i>Madras, Orissa</i>—The same duty as a Bottomry Bond (No. 16) for the amount of the further charge secured by such instrument.</p> <p><i>Burma</i>—The same duty as a Bond (No. 15) for the whole amount payable or deliverable under such lease.</p>
<p>34. Indemnity Bond.</p> <p>Inspectorship-Deed. See Composition deed.</p> <p>Insurance. See Policy of Insurance.</p>	<p><i>India, Assam, Bengal, Bihar, Bombay, Burma, C. P. and Berar, Madras, Orissa, Punjab, U. P.</i>—The same duty as a Security Bond (No. 57) for the same amount.</p>
<p>35. Lease, including an under-lease or sub-lease and any agreement to let or sub-let.</p> <p>(a) Where by such lease the rent is fixed and no premium is paid or delivered—</p> <p>(i) Where the lease purports to be for a term of less than one year;</p> <p>(ii) Where the lease purports to be for a term of not less than one year but not more than three years;</p> <p>(iii) Where the lease purports to be for a term in excess of three years;</p> <p>(iv) Where the lease does not purport to be for any definite term;</p> <p>(v) Where the lease purports to be in perpetuity.</p>	<p><i>India, Bihar, Bombay, Burma, C. P. and Berar, U. P.</i>—The same duty as a Bond (No. 15) for the whole amount payable or deliverable under such lease.</p> <p><i>India, Bombay, Burma, U. P.</i>—The same duty as a Bond (No. 15) for the amount or value of the average annual rent reserved.</p> <p><i>India, Bombay, Burma</i>—The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent reserved.</p> <p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.</p> <p>The same duty as a Conveyance (No. 23) for a consideration equal to one-fifth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.</p>
<p style="text-align: center;">PROVINCIAL</p> <p>(a) (i) Where the lease purports to be for a term of less than one year.</p>	<p style="text-align: center;">CHANGES.</p> <p><i>Assam, Bengal, Madras, Orissa, Punjab</i>—The same duty as a Bottomry Bond (No. 16) for the whole amount payable or deliverable under such lease.</p>

Description of Instrument.	Proper Stamp-duty.
(ii) Where the lease purports to be for a term of not less than one year but not more than five years.	<i>Assam, Bengal, Madras, Orissa, Punjab</i> —The same duty as a Bottomry Bond (No. 16) for the amount or value of the average annual rent reserved.
(iii) Where the lease purports to be for a term exceeding five years and not exceeding ten years.	<i>Bihar, C. P. and Berar</i> —The same duty as a Bond (No. 15) for the amount or value of the average annual rent reserved. <i>Assam, Bengal, Madras, Orissa, Punjab</i> —The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent reserved. <i>Bihar, C. P. and Berar</i> —The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of one and a half times the average annual rent reserved.
U. P. (iii) Where the lease purports to be for a term exceeding three, but not exceeding ten years (iv) Where the lease purports to be for a term exceeding ten years and not exceeding twenty years.	As for clause (iii) of Article 35 in the Central Act, Sch. 1.
(v) Where the lease purports to be for a term exceeding twenty years but not exceeding thirty years.	<i>Assam, Bengal, Madras, Orissa, Punjab, U. P.</i> —The same duty as a Conveyance (No. 23) for a consideration equal to twice the amount or value of the average annual rent reserved. <i>Bihar, C. P. and Berar</i> —The same duty as a Conveyance (No. 23) for a consideration equal to twice the amount or value of the average annual rent reserved.
(vi) Where the lease purports to be for a term exceeding thirty years but not exceeding one hundred years.	<i>Assam, Bengal, Madras, Orissa, Punjab, U. P.</i> —The same duty as a Conveyance (No. 23) for a consideration equal to three times the amount or value of the average annual rent reserved. <i>Bihar, C. P. and Berar</i> —The same duty as a Conveyance (No. 23) for a consideration equal to five times the amount or value of the average annual rent reserved.
(vii) Where the lease purports to be for a term exceeding one hundred years or in perpetuity.	<i>Assam, Bengal, Madras, Orissa, Punjab, U. P.</i> —The same duty as a Conveyance (No. 23) for a consideration equal to four times the amount or value of the average annual rent reserved. <i>Bihar, C. P. and Berar</i> —The same duty as a Conveyance (No. 23) for a consideration equal to eight times the amount or value of the average annual rent reserved. <i>Assam, Bengal, Punjab</i> —The same duty as a Conveyance (No. 23) for a consideration equal in the case of a lease granted solely for agricultural purposes to one-tenth, and in any other case, to one-sixth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.

Description of Instrument.	Proper Stamp-duty.
(viii) Where the lease does not purport to be for any definite term.	<p>U. P.—The same duty as a Conveyance (No. 23) for a consideration equal to one-fifth of the whole amount of rent which would be paid or delivered in respect of the first fifty years of the lease.</p> <p><i>Madras, Orissa</i>—The same duty as a Conveyance (No. 23) for a consideration equal to one-sixth of the whole amount of rent which would be paid or delivered in respect of the first fifty years of the lease.</p> <p><i>Bihar, C. P. and Berar</i>—The same duty as a Conveyance (No. 23) for a consideration equal to one-fourth of the whole amount of rent which would be paid or delivered in respect of the first fifty years of the lease.</p>
Bombay cities and urban areas:—	<p><i>Assam, Bengal, Bihar, C. P. and Berar, Madras, Orissa, Punjab, U. P.</i>—The same duty as a Conveyance (No. 23) for a consideration equal to three times the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.</p>
(a) (iii) Where the lease purports to be for a term in excess of three years.	The same duty as was leviable on a Conveyance (No. 23) before the passing of the Bombay Finance Act, 1932, for a consideration equal to the amount or value of the average annual rent reserved.
(iv) Where the lease does not purport to be for any definite term.	The same duty as was leviable on a Conveyance (No. 23) before the passing of the Bombay Finance Act, 1932, for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.
(v) Where the lease purports to be in perpetuity.	The same duty as was leviable on a Conveyance (No. 23) before the passing of the Bombay Finance Act, 1932, for a consideration equal to one-fifth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.
(b) Where the lease is granted for a fine or premium or for money advanced and where no rent is reserved.	<p><i>India, Assam, Bihar, Bengal, Bombay, Burma, C. P. and Berar, Madras, Orissa, Punjab, U. P.</i>—The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.</p>

Description of Instrument.	Proper Stamp-duty.
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PROVINCIAL CHANGES

Bombay cities and urban areas:—

(b) (i) Where the lease is granted for money advanced and where no rent is reserved.

The same duty as is leviable on a Conveyance (No. 23) under the Bombay Finance Act, 1932, as amended from time to time for a consideration equal to the amount of such advance as set forth in the lease.

(ii) Where the lease is granted for a fine or premium and where no rent is reserved.

The same duty as is leviable on a Conveyance (No. 23) under the Bombay Finance Act, 1932, as amended from time to time for a consideration equal to the amount of such fine or premium as set forth in the lease.

(c) Where the lease is granted for a fine or premium or for money advanced in addition to rent reserved.

India, Assam, Bengal, Bombay, Burma, Bihar, C. P. & Berar, Madras, Orissa, Punjab, U. P.—The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered:

Provided that in any case when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas. (For Bombay, Bihar, C. P. & Berar—One rupee. For Madras—One rupee eight annas. For Assam, Bengal, Orissa, Punjab, U. P.—Twelve annas.)

PROVINCIAL CHANGES

Bombay cities and urban areas:—

(c) (i) Where the lease is granted for money advanced in addition to rent reserved.

The same duty as is leviable on a Conveyance (No. 23) under the Bombay Finance Act, 1932, as amended from time to time for a consideration equal to the amount of advance as set forth in the lease in addition to the duty which would have been payable on such lease if no advance had been paid or delivered.

Provided that, in any case when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and

Description of Instrument,	Proper Stamp-duty.
<p>(ii) Where the lease is granted for a fine or premium in addition to rent reserved.</p> <p><i>Exemptions.</i></p> <p>(a) Lease executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium when a definite term is expressed and such term does not exceed one year or when the average annual rent reserved does not exceed one hundred rupees.</p>	<p>a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.</p> <p>The same duty as is leviable on a Conveyance (No. 23) under the Bombay Finance (Amendment) Act, 1932, for a consideration equal to the amount of such fine or premium as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium had been paid or delivered :</p> <p>Provided that, in any case when an agreement to lease is stamped with the <i>ad valorem</i> stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.</p>

PROVINCIAL CHANGES

For Bengal, and U. P. add :—

In this exemption, a lease for the purposes of cultivation shall include a lease for lands for cultivation together with a home stead or tank.

(b) Leases of fisheries granted under the Burma fisheries Act, 1905 or the Upper Burma land & Revenue Regulation, 1889.

Description of Instrument.	Proper Stamp-duty.
<p>For Punjab add:</p> <p>In this exemption, a lease for the purposes of cultivation shall include a lease of lands for cultivation together with a homestead or tank.</p> <p>For Assam, Bengal, Bihar, C. P. and Berar, Madras, Orissa, Punjab.</p> <p><i>Explanation.</i> When a lessee undertakes to pay any recurring charge such as Govt. Revenue, the land lord's share of cesses or the owner's share of Municipal Rates or Taxes, which is by law recoverable from the lessor, the amount so agreed to be paid by the lessee shall be deemed to be part of the rent.</p> <p>U. P.</p> <p><i>Explanation 1.</i>—When a lessee undertakes to pay any recurring charge, such as Government Revenue, the landlord's share of cesses or the owner's share of municipal rates or taxes, which is by law recoverable from the lessor, the amount so agreed to be paid by the lessee shall be deemed to be part of the rent.</p> <p><i>Explanation 2.</i>—A lease from month to month or year to year without any fixed period or one for a fixed period with a provision allowing the lessee to hold over thereafter for an indefinite term, shall be deemed for the purpose of this article to be a lease not purporting to be for any definite term.</p> <p><i>Explanation 3.</i>—Rent paid in advance shall be deemed to be money advanced within the meaning of this article unless it is specially provided in the lease that the rent paid in advance will be set off towards the last instalment or instalments of rent.</p>	

Description of Instrument.	Proper Stamp-duty.
36. Letter of Allotment of Shares in any company or proposed company or in respect of any loan to be raised by any company or proposed company See also certificate or other document.	Annas two. <i>Madras</i> —Three annas.
37. Letter of credit , that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn. Letter of guarantee See Agreement.	Annas two
38. Letter of License , that is to say, any agreement between a debtor and his creditors, that the latter shall, for a specified time suspend their claims and allow the debtor to carry on business at his own discretion.	<i>Indian</i> —Rupees ten. <i>Assam, Bengal, Bihar, C. P. and Berar, Orissa,</i> Rupees fifteen. <i>Burma, Punjab, U. P.</i> —Rupees twelve annas eight. <i>Madras</i> —Twenty-two rupees eight annas.
39. Memorandum of Association of a company. (A) if accompanied by articles of association under section 37 of the Indian Companies Act 1882: ¹	<i>India</i> —Rupees fifteen. <i>Assam, Bengal, Bihar, Bombay, Burma, C. P. & Berar, Orissa, Punjab, U. P.</i> —Rupees thirty. <i>Madras</i> —Rupees sixty.
(B) if not so accompanied	<i>India</i> —Rupees forty. <i>Bihar, Bombay, Burma, C. P. & Berar, Orissa, Punjab, U. P.</i> —Rupees eighty. <i>Madras</i> —One hundred & sixty rupees. <i>Assam, Bengal</i> —(i) where the nominal share capital does not exceed Rs. one lakh—Rupees eighty. (ii) Where the nominal share capital exceeds one lakh of rupees—One hundred and thirty rupees.
<i>Exemption.</i>	
Memorandum of any association not formed for profit and registered under Section 26 of the Indian Companies Act, 1882. ²	
40. Mortgage-deed , not being an Agreement relating to deposit of Title-Deeds, Pawn or Pledge, (No. 6), Bottomry Bond (No 16). Mortgage of a Crop, (No. 41) Respondentia Bond (No. 56), or Security Bond—(No. 57). (a) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given ;	<i>India, Assam, Bengal, Bihar, Bombay, Burma, Orissa, Madras, Punjab, U. P.</i> —The same duty as a Conveyance (No 23) for a consideration equal to the amount secured by such deed.

1. Now Section 17 of Act No. VII, of 1913.

2. Now Act, VII of 1913.

Description of Instrument.	Proper Stamp-duty.
<p>C. P. & Berar— where the amount secured by such deed does not exceed Rs. 50. where it exceeds Rs. 50 but does not exceed Rs. 100. where it exceeds Rs. 100 but does not exceed Rs. 200. where it exceeds Rs. 200 but does not exceed Rs. 300. where it exceeds Rs. 300 but does not exceed Rs. 400. where it exceeds Rs. 400 but does not exceed Rs. 500. where it exceeds Rs. 500.</p>	<p>Eight annas. One rupee. Two rupees. Three rupees. Four rupees. Five rupees. The same duty as a Conveyance (No. 23) for a consideration equal to the amount secured by such deed.</p>
<p>The city of Bombay, the cities of Ahmedabad, Poona and any other city notified, other urban area notified.</p>	<p>The same duty as is leviable on a Conveyance (No. 23) under the Bombay Finance Act, 1932, as amended from time to time for a consideration equal to the amount secured by such deed.</p>
<p>(b) when possession is not given or agreed to be given as aforesaid;</p>	<p>India, Assam, Bengal, Bihar, Bombay, Burma, Punjab, U. P.—The same duty as a Bond (No. 15) for the amount secured by such deed. Madras, Orissa—The same duty as a Bottomry Bond (No. 16) for the amount secured by such deed.</p>
<p>C. P. & Berar— where the amount secured does not exceed Rs. 10 where it exceeds Rs. 10 but does not exceed Rs. 50 where it exceeds Rs. 50 but does not exceed Rs. 100 where it exceeds Rs. 100 but does not exceed Rs. 200. where it exceeds Rs. 200 but does not exceed Rs. 300. where it exceeds Rs. 300 but does not exceed Rs. 400. where it exceeds Rs. 400 but does not exceed Rs. 500. where it exceeds Rs. 500.</p>	<p>Two annas. Four annas. Eight annas. One rupee. One rupee eight annas. Two rupees. Two rupees eight annas. The same duty as a Bond (No. 15) for the amount secured by such deed.</p>
<p><i>Explanation.</i>—A mortgagor who gives to the mortgagee a power-of-attorney to collect rents or a lease of the property mortgaged or part thereof, is deemed to give possession within the meaning of this Article.</p>	


Description of Instrument.	Proper Stamp-duty.
<p>(c) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped— for every sum secured not exceeding Rs. 1,000;</p>	<p><i>India, Burma</i>—Annas eight. <i>Assam, Bengal, Bihar, C. P. and Berar, Orissa, Punjab, U. P.</i>—Twelve annas, <i>Bombay</i>—One rupee. <i>Madras</i>—One rupee eight annas.</p>
<p>and for every Rs. 1,000 or part thereof secured in excess of Rs. 1,000.</p>	<p><i>India Burma</i>—Anna eight. <i>Bihar, C. P. and Berar, Orissa, Punjab, U. P.</i>—Twelve annas. <i>Assam, Bengal, Bombay</i>—One rupee. <i>Madras</i>—One rupee eight annas.</p>
<p><i>Exemptions</i>—(1) Instrument executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturist Loans Act, 1884, or by their sureties as security for the repayment of such advances. (2) Letter of hypothecation accompanying a bill of exchange</p>	
<p>42. Notarial Act, that is to say, any instrument, endorsement, note, attestation, certificate, or entry not being a Protest (No. 50) made or signed by a Notary Public in the execution of the duties of his office or by any other person lawfully acting as a Notary Public. See also Protest of Bill or Note (No. 50).</p>	<p><i>India</i>—Rupee one. <i>Bihar, C. P. and Berar, Orissa</i>—Rupees one annas eight. <i>Assam, Bengal, Bombay, Burma, Punjab, U. P.</i>—Rupees two. <i>Madras</i>—Two rupees four annas.</p>
<p>43. Note or Memorandum sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal. (a) of any goods exceeding in value twenty rupees : (b) of any stock or marketable security exceeding in value twenty rupees.</p>	<p><i>India</i>—Annas two. <i>Assam, Bengal, Burma</i>—Annas four. <i>Bihar, C. P. and Berar, Orissa, Punjab, U. P.</i>—Annas three. <i>Madras</i>—Six annas. <i>India</i>—Subject to a maximum of ten rupees one anna for every Rs. 10,000 or part thereof of the value of the stock or security.</p>

Description of Instrument.	Proper Stamp-duty.
<p>Note or memorandum sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal of a Government security or a share, scrip, stock, bond, debenture, debenture stock or other marketable security of a like nature in or of an incorporate company or other body corporate, an entry relating to which is required to be made in a clearance list in accordance with the rules of a stock exchange recognised under the Bombay Security Contracts Control Act, 1925.</p>	<p><i>Bihar, C. P. and Berar, Orissa, Punjab, U. P.</i>—Subject to a maximum of rupees fifteen, two annas for every Rs. 10,000 or part thereof of the value of the stock or security.</p> <p><i>Madras</i>—Subject to a maximum of thirty rupees four annas for every Rs. 10,000 or part thereof of the value of the stock or security.</p> <p><i>Assam, Bengal</i>—(a) of any stock or marketable security in value Rs. 20 but not being a Government security, two annas for every Rs. 5,000 or part thereof of the value of the stock or security.</p> <p>(b) of a Government security subject to a maximum of Rs. 20, two annas for every Rs. 10,000 or part thereof of the value of the security.</p> <p><i>Burma</i>—Subject to a maximum of Rs. 20, two annas for every Rs. 10,000 or part thereof of the value of the stock or security.</p> <p><i>Bombay</i>—(a) of any goods exceed in value Rs. 20—Four annas.</p> <p>(b) of any share, scrip, stock, bond debenture, debenture-stock or other marketable security of a like nature exceeding in value Rs. 20 not being a Government security—two annas for every Rs. 2,500 or part thereof of the value of the security at the time of its purchase or sale as the case may be.</p> <p>(c) of a Government security—Subject to a maximum of Rs. 20, two annas for every Rs. 10,000 or part thereof of the value of the security at the time of its purchase or sale as the case may be.</p>

Description of Instrument.	Proper Stamp-duty.
<p>45. Partition— Instrument of [as defined by Section 2 (15)].</p>	<p><i>India, Assam, Bengal, Burma, C. P. and Berar, Punjab, U. P.</i>—The same duty as a Bond (No. 15) for the amount or value of the separated share or shares of the property.</p> <p><i>Madras, Orissa</i>—The same duty as a Bottomry Bond (No. 10) for the amount or value of the separated share or shares of the property.</p> <p>N. B. The largest share remaining after the property is partitioned (or if there are two or more shares of equal value and not smaller than any of the other shares then one of such equal shares) shall be deemed to be that from which the other shares are separated :</p> <p>Provided always that—</p> <p>(a) When an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than eight annas ;</p> <p><i>Assam, Bengal, Bihar, Bombay, C. P. and Berar</i>,—Not less than Re. 1.</p> <p><i>Orissa, Punjab, U. P.</i>—Not less than Re. 0-12-0.</p> <p><i>Madras</i>—Not less than one rupee eight annas ;</p> <p>(b) Where land is held on Revenue Settlement for a period not exceeding thirty years and paying the full assessment, the value for the purpose of duty shall be calculated at not more than five times the annual revenue ;</p> <p><i>Punjab</i>—Not more than ten times the annual revenue.</p> <p><i>U. P.</i>—Where land is held on revenue settlement the value for the purpose of this Article shall be deemed to be—</p> <p>(i) Sixteen times the annual revenue if the settlement is permanent ;</p> <p>(ii) Eight times the annual revenue if the settlement is temporary ; and</p> <p>(iii) Eight times the nett profits that have arisen from the land during the year next before the date of partition where the land is wholly or partly exempt from payment of revenue.</p>

Description of Instrument.	Proper Stamp-duty.
46. Partnership—	(c) Where a final order for effecting a partition passed by any Revenue authority or any Civil Court, or an award by an arbitrator directing a partition, is stamped, with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed the duty on such instrument shall not exceed eight annas.
A.—Instrument of :—	<i>Assam, Bengal, Bihar, Bombay, C. P. and Berar</i> —Shall not exceed Re. 1. <i>Orissa, Punjab, U. P.</i> —Shall not exceed Re. 0-12-0 <i>Madras</i> —Shall not exceed Re. 1-8-0
(a) where the capital of the partnership does not exceed Rs. 500 ;	<i>India, Punjab</i> —Rupees two annas eight. <i>Assam, Bengal, Bombay, Burma, C. P. & Berar, Bihar, Orissa</i> —Rupees five. <i>U. P.</i> —Rupees three annas twelve. <i>Madras</i> —Ten rupees.
(b) in any other case ..	<i>India, Punjab</i> —Rupees ten. <i>Assam, Bengal, Bihar, Bombay, Burma, C. P. and Berar, Orissa</i> —Rupees twenty. <i>Madras</i> —Rupees forty. <i>U. P.</i> —(1) where the capital exceeds Rs. 500 but does not exceed Rs. 2,000—Rupees seven annas eight. (2) in any other case—Rupees fifteen.
B.—Dissolution of	<i>India, Punjab</i> —Rupees five. <i>Assam, Bengal, Bihar, Bombay, Burma, C. P. & Berar, Orissa, U. P.</i> —Rupees ten. <i>Madras</i> —Twenty rupees.

Pawn or Pledge, See Agreement relating to deposit of title deeds, pawn or pledge.

Description of Instrument.	Proper Stamp-duty.	
<p>(b) in any other case—for the maximum amount which may become payable in the case of any single accident or sickness where such amount does not exceed Rs 1,000 and also where such amount exceeds Rs. 1,000 for every Rs. 1,000 or part thereof.</p> <p>CC—Insurance by way of Indemnity against liability to pay damages on account of accidents to workmen employed by or under the insurer or against liability to pay compensation under the Workmen's Compensation Act, 1923, for every Rs. 100 or part thereof payable as premium.</p>	<p>Two annas.</p> <p>Provided that, in case of a policy of insurance against death by accident when the annual premium payable does not exceed Rs 2-8-0 per Rs. 1,000, the duty on such instrument shall be one anna for every Rs. 1,000 or part thereof, of the maximum amount which may become payable under it.</p> <p>One anna.</p>	
<p>D—Life-Insurance or other insurance not specially provided for except such a Re-insurance as is described in Division E of this article.</p> <p>(i) for every sum insured not exceeding Rs. 250</p> <p>(ii) for every sum insured exceeding Rs. 250 but not exceeding Rs. 500</p> <p>(iii) for every sum insured exceeding Rs. 500 but not exceeding Rs. 1,000 and also for every Rs. 1,000 or part thereof in excess of Rs. 1,000</p> <p><i>Exemption.</i></p> <p>Policies of life insurance granted by the Director-General of Post-Offices, in accordance with the rules for Postal Life-Insurance issued under the authority of the Governor-General in Council.</p>	<p>If drawn singly.</p> <p>Two annas.</p> <p>Four annas.</p> <p>Six annas.</p>	<p>If drawn in duplicate, for each part.</p> <p>One anna.</p> <p>Two annas.</p> <p>Three annas.</p> 

Description of Instrument.	Proper Stamp-duty.
<p>E.—Re-Insurance by an Insurance Company, which has granted a Policy of the nature specified in division A or division B of this article with another company by way of indemnity or guarantee against the payment on the original insurance of a certain part of the sum insured thereby.</p>	<p>One quarter of the duty payable in respect of the original insurance but not less than one anna or more than one rupee.</p>
<p><i>General Exemption.</i></p>	
<p>Letter of cover or engagement to issue a policy of insurance : Provided that, unless such letter or engagement bears the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose, except to compel the delivery of the policy therein mentioned.</p>	
<p>48. Power of Attorney (as defined by Section 2 (21) not being a Proxy (No. 52)</p>	
<p>(a) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents;</p>	<p><i>India—Annas eight.</i> <i>Assam, Fungal, Bombay, Burma, Punjab.—</i> <i>Rupee one.</i> <i>Bihar, C. P. and Berar, Madras, Orissa,</i> <i>U. P.—Annas twelve.</i></p>
<p>(b) when required in suits or proceedings under the Presidency Small Cause Courts Act, 1882;</p>	<p><i>India—Annas eight.</i> <i>Bihar, C. P. and Berar, Orissa, U. P.—</i> <i>Annas twelve.</i> <i>Madras—One rupee two annas.</i> <i>Assam, Bengal, Bombay, Burma, Punjab.—</i> <i>Rupee one.</i></p>
<p>(c) when authorising one person or more to act in a single transaction other than the case mentioned in clause (a);</p>	<p><i>India—Rupee one.</i> <i>Assam, Bengal, Bombay, Burma, Punjab—</i> <i>Rupees two.</i> <i>Bihar, C. P. and Berar, Madras, Orissa, U.P.</i> <i>— Rupee one annas eight.</i></p>
<p>(d) when authorising not more than five persons to act jointly and severally in more than one transaction or generally;</p>	<p><i>India—Rupees five.</i> <i>Assam, Bengal, Bombay, Burma, Punjab—</i> <i>Rupees ten.</i> <i>Bihar, C. P. and Berar, Orissa, U. P.—</i> <i>Rupees seven annas eight.</i> <i>Madras—Rupees eleven four annas.</i></p>
<p>(e) when authorising more than five but not more than ten persons to act jointly and severally in more than one transaction or generally;</p>	<p><i>India—Rupees ten.</i> <i>Assam, Bengal, Bombay, Burma, Punjab—</i> <i>Rupees twenty.</i> <i>Bihar, C. P. and Berar, Orissa, U. P.—</i> <i>Rupees fifteen.</i> <i>Madras—Rupees twenty-two annas eight.</i></p>

Description of Instrument.	Proper Stamp-duty.
<p>(f) when given for consideration and authorising the attorney to sell any immovable property ;</p> <p>(g) in any other case.</p>	<p><i>India, Assam, Bengal, Bihar, Bombay, Burma, C. P. and Berar, Madras, Orissa, Punjab, U. P.</i>—The same duty as a Conveyance (No. 23) for the amount of the consideration.</p> <p>The city of Bombay, the city of Ahmedabad, Poona and any other city notified, other urban area notified—the same duty as was leviable on a Conveyance (No. 23) before the passing of the Bombay Finance Act, 1932, for the amount of the consideration.</p> <p><i>India</i>—Rupee one for each person authorised.</p> <p><i>Assam, Bengal, Bombay, Burma, Punjab.</i>—Rupces two for each person authorised.</p> <p><i>Bihar, C. P. and Berar, Orissa, U. P.</i>—Rupee one annas eight for each person authorised.</p> <p><i>Madras</i>—Two rupees four annas for each person authorised.</p> <p>N. B.—The term "Registration" includes every operation incidental to registration under the Indian Registration Act, 1877.</p>
<p>EXPLANATION</p> <p>For the purposes of this Article more persons than one when belonging to the same firm shall be deemed to be one person.</p>	
<p>49. Promissory Note as defined by Section 2(22)</p> <p>(a) When payable on demand—</p> <p>(i) when the amount or value does not exceed Rs. 250 ;</p> <p>(ii) when the amount or value exceeds Rs. 250, but does not exceed Rs. 1,000 ;</p> <p>(iii) in any other case.</p> <p>(b) When payable otherwise than on demand.</p>	<p>One anna.</p> <p>Two annas.</p> <p>Four annas.</p> <p>The same duty as a bill of exchange (No. 13) for the same amount payable otherwise than on demand.</p>
<p>50. Protest of Bill or Note, that is to say, any declaration in writing made by a Notary Public or other person lawfully acting as such, attesting the dishonour of a Bill of Exchange or promissory note.</p>	<p><i>India</i>—Rupee one.</p> <p><i>Assam, Bengal, Bihar, Bombay, Burma, C. P. and Berar, Madras, Orissa, Punjab, U. P.</i>—Rupees two.</p>
<p>52. Proxy empowering any person to vote at any one election of the members of a district or local board or of a body of Municipal Commiss</p>	<p>Two annas.</p>

Description of Instrument.	Proper Stamp-duty.
<p>ioners, or at any one meeting of (a) members of an incorporated company or other body corporate whose stock or funds is or are divided into shares and transferable, (b) a local authority, or (c) proprietors, members or contributors to the Funds of any institution.</p>	
<p>53. Receipt, [as defined by Section 2 (23)] for any money or other property the amount or value of which exceeds twenty rupees.</p>	<p>One anna.</p>
<p><i>Exemptions.</i></p>	
<p>Receipt</p>	
<p>(a) endorsed on or contained in any instrument duly stamped, or any instrument exempted under the proviso to Section 3 (instruments executed on behalf of the Crown), or any cheque or bill of exchange payable on demand acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest or annuity, or other periodical payment thereby secured ;</p> <p>(b) for any payment of money without consideration ;</p> <p>(c) for any payment of rent by a cultivator on account of land assessed to Government revenue or (in the Presidencies of Fort St. George and Bombay) of Inam Lands ;</p> <p>(d) for pay or allowances by non-commissioned officers, soldiers or airmen of His Majesty's Military or Air Forces when serving in such capacity, or by mounted police constables ;</p> <p>(e) given by holders of family certificates in cases where the person from whose pay or allowances the sum com-</p>	

Description of Instrument.	Proper Stamp-duty.
<p>prised in the receipt has been assigned is a non-commissioned officer, soldier or airman of any of the said forces and serving in such capacity;</p> <p>(f) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned officers, soldiers or airmen and not serving the Crown in any other capacity;</p> <p>(g) given by a headman or lambardar for land revenue or taxes collected by him;</p> <p>(h) given for money or securities for money deposited in the hands of any banker, to be accounted for:</p> <p>Provided that the same is not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for:</p> <p>Provided also that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of, or in, any incorporated company or other body corporate or such proposed or intended company or body or in respect of a debenture being a marketable security.</p> <p>See also Policy of Insurance [No. 47-B (2)]</p>	
<p>54. Reconveyance of Mortgaged Property.</p> <p>(a) if the consideration for which the property was mortgaged does not exceed Rs. 1,000;</p>	<p><i>India, Assam, Bengal, C. P. and Berar, Madras, Orissa, Punjab, U. P.</i>—The same duty as a Conveyance (No. 23) for the amount of such consideration as set forth in the Reconveyance.</p> <p><i>Bombay</i>—The same duty as a Bond (No. 15) for the amount of such consideration as set forth in the Reconveyance.</p>

Description of Instrument.	Proper Stamp-duty.
(b) in any other case...	<i>India, Bombay</i> —Rupees ten, <i>Assam, Bengal, Bihar, C. P. and Berar, Orissa, Punjab, U. P.</i> —Rupees fifteen. <i>Madras</i> —Rupees thirty.
<i>Burma.</i> Reconveyance of mortgaged property or instrument of extinguishment of a mortgage.	Subject to a maximum of Rs. 2-8-0 the same duty as a Conveyance (No. 23) for the amount of the consideration for the mortgage.
55. Release , that is to say, any instrument (not being such a release as is provided for by Section 23-A) whereby a person renounces a claim upon another person or against any specified property—	<i>India, Assam, Bengal, Bombay, Burma, C. P. and Berar, U. P.</i> —The same duty as a Bond (No. 15) for such amount or value as set forth in the Release. <i>Madras, Orissa, Punjab</i> —The same duty as a Bottomry Bond (No. 16) for such amount or value as set forth in the Release.
(a) if the amount or value of the claim does not exceed Rs. 1,000	
(b) in any other case.	<i>India</i> —Rupees five. <i>Assam, Bengal, Bombay</i> , Rupees ten. <i>Burma, Bihar, C. P. and Berar, Orissa, Punjab, U. P.</i> —Rupees seven annas eight. <i>Madras</i> —Fifteen rupees
57. Security bond or Mortgage deed executed by way of security* for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract,—	<i>India, Assam, Bengal, Bihar, Bombay, Burma, C. P. and Berar, Punjab, U. P.</i> —The same duty as a Bond (No. 15) for the amount secured. <i>Madras, Orissa</i> —The same duty as a Bottomry Bond (No. 16) for the amount secured.
(a) when the amount secured does not exceed Rs. 1,000;	
(b) in any other case.	<i>India</i> —Rupees five. <i>Assam, Bengal, Bombay</i> —Rupees ten. <i>Burma, Bihar, C. P. & Berar, Orissa, Punjab, U. P.</i> —Rupees seven annas eight. <i>Madras</i> —Fifteen rupees.

*For Bengal add words "for the due discharge of a liability or" after it.

Description of Instrument.	Proper Stamp-duty.
<p style="text-align: center;"><i>Exemptions.</i></p> <p>Bond or other instrument when executed—</p> <p>(a) by headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, Section 99, for the due performance of their duties under that Act ;</p> <p>(b) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem ;</p> <p>(c) under No. 3-A of the rules made by the Provincial Government under Section 70 of the Bombay Irrigation Act, 1879 ;</p> <p>(d) executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists Loans Act, 1884, or by their sureties, as security for the repayment of such advances ;</p> <p>(e) executed by officers of Crown or their sureties to secure, the due execution of an office or the due accounting for money or other property received by virtue thereof.</p>	

PROVINCIAL CHANGES IN EXEMPTIONS

Bengal

In clause (c) for words ' Provincial Government ' substitute words ' Provincial Government of Bombay ' and in clause (e) for words ' Officers of the crown ' substitute words ' Servants of the Crown '.

Description of Instrument.	Proper Stamp-duty.
<p><i>Bihar C. P. & Berar, Orissa.</i> Delete clause (c) and renumber clauses (d) and (e) as clauses (c) and (d) respectively.</p> <p><i>Madras</i>—In clause (c) for words 'Provincial Government' substitute the words 'Provincial Government of Bombay' and in clause (e) for word 'Crown' substitute the word 'Government.'</p> <p><i>Punjab</i>—delete clauses (a) and (c). Renumber clause (b) as clause (a), Clause (d) as clause (b) and, clause (e) as clause (c) and for words 'Crown' in new clause (c) substitute word 'Government'.</p> <p><i>U. P.</i>—In clause (c) for words 'Provincial Government' substitute the words 'Governor of Bombay in Council' and in clause (e) for the word 'Crown' substitute the word 'Government'.</p>	
<p>59. Share Warrant to bearer issued under the Indian Companies Act, 1882.*</p>	<p><i>India, Assam, Bengal, Bombay, Burma, C. P. & Berar, Madras, Orissa, Punjab</i>—One and a half times the duty payable on a Conveyance (No. 23) for a consideration equal to the nominal amount of the shares specified in the warrant.</p> <p><i>U. P.</i>—The same duty as a Debenture transferable by Delivery (No. 27-b) for a face amount equal to the nominal amount of the share specified in the warrant.</p> <p>The city of Bombay, the city of Ahmedabad Poona and any other city notified, other urban area notified—one and half times the duty payable on a Conveyance (No. 23) before the passing of the Bombay Finance Act, 1932, for a consideration equal to the nominal amount of the shares specified in the warrant.</p>
<p><i>Exemptions.</i></p> <p>Share warrant when issued by a company in pursuance of the Indian Companies Act, 1882* Section 30, to have effect only upon payment, as composition for that duty, to the Collector of Stamp Revenue, of—</p> <p>(a) One and a half per centum of the whole subscribed capital of the company, or</p>	

*Now Act VII of 1913

Description of Instrument.	Proper Stamp-duty.
(b) if any company which has paid the said duty or composition in full, subsequently issues an addition to its subscribed capital one and a half per centum of the additional capital so issued.	
61. Surrender of lease—	
(a) when the duty with which the lease is chargeable does not exceed five rupees (<i>Assam Bengal, Bihar, C. P. and Berar, Orissa, Punjab, U. P.</i> —Rupees seven eight annas, <i>Madras</i> —fifteen rupees)	<i>India, Assam, Bengal, Bihar, Bombay, Burma, C. P. and Berar, Madras, Orissa, Punjab, U. P.</i> —The duty with which such lease is chargeable.
(b) in any other case.	<i>India</i> —Rupees five. <i>Assam, Bengal, Bihar, Burma, C. P. and Berar, Orissa, Punjab, U. P.</i> —Rupees seven annas eight. <i>Madras</i> —Fifteen rupees.
Exemption.	
Surrender of lease, when such lease is exempted from duty.	
62. Transfer (whether with or without consideration.)—	
(a) of shares in an incorporated company or other body corporate.	<i>India, Assam, Burma, Bihar, C. P. and Berar, Bengal, Madras, Orissa, Punjab</i> —One-half of the duty payable on Conveyance (No. 23) for a consideration equal to the value of the share. <i>U. P.</i> — When the value of the share or the face amount of the debenture does not exceed Rs. 100 Twelve annas. Where it exceeds Rs. 100 but does not exceed 200 One Rupee eight annas. Where it exceeds Rs. 200 but does not exceed 300 Two Rupees four annas. Where it exceeds Rs. 300 but does not exceed 400 Three Rupees. Where it exceeds Rs. 400 but does not exceed 500 Three Rupees twelve annas.

Description of Instrument.	Proper Stamp-duty.
(b) of debentures being marketable securities, whether the debenture is liable to duty or not, except debenture provided for by Section 8 ;	<p>Where it exceeds Rs. 500 but does not exceed 600 Four Rupees eight annas.</p> <p>Where it exceeds Rs. 600 but does not exceed 700 Five Rupees four annas.</p> <p>Where it exceeds Rs. 700 but does not exceed 800 Six Rupees.</p> <p>Where it exceeds Rs. 800 but does not exceed 900 Six Rupees twelve annas</p> <p>Where it exceeds Rs. 900 but does not exceed 1,000 Seven Rupees eight annas.</p> <p>And for every Rs. 500 or part thereof in excess of Rs. 1,000 Three Rupees twelve annas.</p> <p>Bombay—Twelve annas for every rupees one hundred or part thereof of the value of the share.</p>
(c) of any interest secured by a bond, mortgage-deed or policy of insurance—	<p><i>India, Assam, Bengal, Bihar, Burma, C. P. and Berar, Madras Orissa, Punjab</i>—One-half of the duty payable on a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.</p> <p><i>U. P.</i>—Same as under (a)</p> <p><i>Bombay</i>...Twelve annas for every rupees one hundred or part thereof of the face amount of the debenture.</p>
(i) if the duty on such bond, mortgage-deed or policy does not exceed five rupees (<i>Madras</i> —Fifteen rupees and <i>Bombay</i> —Ten rupees)	<p><i>India, Assam, Bengal, Bihar, Bombay, Burma, C. P. and Berar, Madras, Orissa, Punjab, U. P.</i>... The duty with which such bond, mortgage-deed or policy of insurance is chargeable.</p>
(ii) in any other case...	<p><i>India</i>—Rupees five.</p> <p><i>Assam, Bombay, Bengal</i>—Rupees ten.</p> <p><i>Burma, Bihar, C. P. and Berar, Orissa, Punjab, U. P.</i>—Rupees seven annas eight.</p> <p><i>Madras</i>—Fifteen rupees.</p>

Description of Instrument.	Proper Stamp-duty.
	<p><i>U. P.</i>—Provided that if by any one instrument the interests secured by several bonds, mortgage-deeds or policies of insurance is transferred the duty payable in respect of such instrument shall be the aggregate of the duties which would have been payable if separate instruments of transfer were executed in respect of each such bond, mortgage-deed or policy of insurance.</p>
<p>(d) of any property under the Administrator-General's Act, 1874 Section 31.*</p>	<p><i>India, Bombay</i>—Rupees ten. <i>Assam, Bengal, Burma, Orissa, Punjab, U. P.</i>—Rupees fifteen. <i>Bihar, C. . and Berar</i>—Rupees twenty. <i>Madras</i>—Twenty-two rupees eight annas.</p>
<p>(e) of any trust property without consideration from one trustee to another trustee or from a trustee to a beneficiary.</p>	<p><i>India</i>—Five Rupees or such smaller amount as may be chargeable under clauses (a) to (c) of this article. <i>Assam, Bengal, Bihar, Burma, C. P. and Berar, Orissa, Punjab, U. P.</i>—Seven Rupees eight annas or such smaller amount as may be chargeable under clauses (a) to (c) of this Article. <i>Madras</i>—Eleven Rupees four annas or such smaller amount as may be chargeable under clauses (a) to (c) of this Article.</p>

Exemptions

Transfer by endorsement—

- (a) of a bill of exchange; cheque or promissory note ;
- (b) of a bill of lading, delivery order, warrant for goods, or other mercantile document of title to goods ;
- (c) of a policy of insurance ;
- (d) of securities of the Central Government.

See also Section 8.



Burma—In the Act as adapted to Burma add in Exemption (d) the words “ or of the Government of Burma ” after the word “ Government.”

Now Act, III of 1913, Section 25.

Description of Instrument.	Proper Stamp-duty.
<p>64. Trust. A.—Declaration of—of, or concerning, any property when made by any writing not being a Will.</p> <p>B.—Revocation of—of, or concerning, any property when made by any instrument other than a will.</p>	<p><i>India, Bombay, Burma</i>—The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument but not exceeding fifteen rupees.</p> <p><i>Assam, Bengal, Madras, Orissa, Punjab</i>—the same duty as a Bottomry Bond (No 16) for a sum equal to the amount or value of the property concerned, as set forth in the instrument, but not exceeding twenty-two rupees eight annas. (<i>Madras</i>, Froty-five rupees).</p> <p><i>Bihar, C. P. and Berar, U. P.</i>—The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument but not exceeding twenty-two rupees eight annas.</p> <p><i>India, Bombay, Burma</i>—The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument, but not exceeding ten rupees.</p> <p><i>Assam, Bengal, Madras, Orissa, Punjab</i>—The same duty as a Bottomry Bond (No. 16) for a sum equal to the amount or value of the property concerned as set forth in the instrument, but not exceeding fifteen rupees, (<i>Madras</i>, thirty rupees).</p> <p><i>Bihar, C. P. and Berar, U. P.</i>—The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument, but not exceeding fifteen rupees.</p>
<p>See also Settlement (No. 58)</p> <p>65. Warrant for Goods ; that is to say, any instrument evidencing the title of any person therein named, or his assigns or the holder thereof, to the property in any goods lying in or upon any dock, ware-house or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be.</p>	<p><i>India</i>--Annas four. <i>Assam, Bengal, Bombay, Burma</i>--Annas eight. <i>Bihar, C. P. and Berar, Orissa, Punjab, U. P.</i>--Annas six. <i>Madras</i>--Twelve annas.</p>

BALANCE SHEET

FORM F.

(See section 132)

.....LIMITED

Balance Sheet as at..... 19

CAPITAL AND LIABILITIES.		PROPERTY AND ASSETS.	
CAPITAL—		FIXED CAPITAL EXPENDITURE—	
Authorised Capital.....shares of Rseach...		(Distinguishing as far as possible between expenditure on good-will, land, buildings, leaseholds, railway sidings, plant, machinery, furniture, development of property, patents, trade marks, and designs, interest paid out of Capital during construction, etc., and stating in every case the original cost and the additions thereto and deductions therefrom during the year, and the total Depreciation written off under each head. Where sums have been written off on a reduction of capital or a revaluation of assets every balance-sheet after the first balance-sheet subsequent to the reduction or revaluation shall show the reduced figures, with the date of and the amount of the reduction made.)	
(Distinguishing between the various classes of Capital.)		PRELIMINARY EXPENSES	
Issued Capital.....shares of Rs.....each ...		COMMISSION OR BROKERAGE	
(i) Shares issued as fully paid up pursuant to any contract without payments being received in cashshares of Rs....each.		(Commission or Brokerage paid for underwriting or placing or subscribing shares or debentures until written off.	
(ii) Shares issued for payments in cash..... shares of Rs.....each.		DISCOUNT ALLOWED on the issue of shares or so much as has not been written off at the date of the balance-sheet.	
Subscribed Capital.....shares of Rs..... each...		STORES AND SPARE PARTS	
Amount called up at Rs.....per share		LOOSE TOOLS	
Less—Calls unpaid—		LIVE-STOCK AND VEHICLES	
(i) due from Managing Agents		STOCK IN TRADE	
(ii) due from others			
Add—Forfeited shares (amount paid up).			
Note.—Where circumstances permit issued and subscribed capital and amount called up may be shown as one item, e.g.,			
Issued and Subscribed Capital..... shares of Rs... each Rs..... paid up.			
RESERVES			
DEBENTURES stating the nature of security			
ANY SINKING FUND			

¹ This Form was substituted by S. 124 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

BALANCE SHEET (contd.)

CAPITAL AND LIABILITIES.		PROPERTY AND ASSETS.	
ANY OTHER FUND CREATED OUT OF NET PROFITS, including any development fund		(Stating mode of valuation, e.g., cost or market value).	
ANY PENSION OR INSURANCE FUND		BILLS OF EXCHANGE	
PROVISION FOR BAD AND DOUBTFUL DEBTS, in the case of Companies other than Banking companies		BOOKS DEBITS, other than bad and doubtful debts of a Banking Company for which provision has been made to the satisfaction of the Auditors.]	
LOANS—		(Distinguishing between those considered good and in respect of which the company is fully secured and those considered good for which the company holds no security other than the debtor's personal security, and distinguishing between debts considered good and debts considered doubtful or bad. Debts due by directors or other officers of the company or any of them either severally or jointly with any other persons to be separately stated)	
(a) Secured—		ADVANCES	
(i) loans on mortgages or fixed assets		(Recoverable in cash or in kind or for value to be received, e.g., Rates, Taxes, Insurance, etc., showing separately—	
(ii) loans on debentures		(i) loans given to subsidiary companies	
(iii) loans from banks, stating the nature of security		(ii) loans including temporary advances made at any time during the year to directors or managers of the company)	
(iv) liabilities to subsidiary companies		INVESTMENTS	
(v) other secured loans, stating the nature of security		(Showing nature of investments and mode of valuation, e.g., Costrol Market value and distinguishing—	
(vi) Interest accrued on mortgages, debentures or other secured loans		(i) investments in Government or trust securities.	
(b) Unsecured—		(ii) investments in shares, debentures or bonds showing separately shares fully paid up and partly paid up)	
(i) loans from banks		UNCLAIMED DIVIDENDS	
(ii) fixed deposits		LIABILITIES—	
(iii) short term loans		For Goods supplied	
(iv) advances by directors or managers and managing agents		FOR EXPENSES	
(v) Interest accruing but not due and interest accrued and due		FOR ACCEPTANCE	
(vi) liabilities to subsidiary companies		FOR OTHER FINANCE	
UNCLAIMED DIVIDENDS		ADVANCE PAYMENTS AND UNEXPIRED DISCOUNTS	
LIABILITIES—			
For Goods supplied			
FOR EXPENSES			
FOR ACCEPTANCE			
FOR OTHER FINANCE			
ADVANCE PAYMENTS AND UNEXPIRED DISCOUNTS			

(1) Substituted by Act XXX of 1943.

BALANCE SHEET (contd.)

CAPITAL AND LIABILITIES.		PROPERTY AND ASSETS.	
(For the portion for which value has still to be given, e.g., in case of the following, classes of companies —		(iii) investments in shares, debentures or bonds of subsidiary companies	
Newspaper, fire insurance, Theatre, Club, Banking, Steamship Companies, etc) ...		(iv) immovable properties	
PROFIT AND LOSS		INTEREST ACCRUED ON INVESTMENTS	
CONTINGENT LIABILITIES—		CASH AND OTHER BALANCES	
Claims against the company not acknowledged as debts	Amount in hand
Money for which the company is contingently liable	Balances with Agents and Bankers (in detail showing whether on deposit or current account, etc)
(Showing separately the amount of any guarantees given by the company on behalf of directors or officers of the company.)	Profit and Loss	
Arrears of Cumulative Preference Dividends		

[The information required to be given under any of items or sub-items in this Form if not included in the Balance-Sheet itself shall be furnished in a separate Schedule or Schedules to be attached to and to form part of the Balance-Sheet.]

.....Co. Ltd.

FORM OF CERTIFICATE.

under Section 32 (4) of Indian Companies Act.

Certified that since the date of the incorporation of the.....Co. Ltd.
no invitation to the public to subscribe for in shares or debentures of the com-
pany has been issued.

SECRETARY,
For & on behalf of
.....Co. Ltd.

Dated.....

.....

ANOTHER FORM

.....Co. Ltd.

FORM OF CERTIFICATE

under Section 32 (4) of Indian Companies Act.

CERTIFIED that since the date of the incorporation of the.....Co. Ltd.
no invitation has been issued to the public to subscribe for in shares or deben-
tures of the company and that the following shareholders viz.

No. 51.....

No. 52.....

are the employes of the company and working as clerks therein.

SECRETARY,
For and on behalf of
.....Co. Ltd.

Dated :

.....

ANOTHER FORM

.....Co. Ltd.

FORM OF CERTIFICATE

under Section 32 (4) of Indian Companies Act.

CERTIFIED that since the date of the last return submitted under section
32 of the Indian Companies Act, the company has not issued any invitation to
the public to subscribe for in shares or debentures of the company and that the
following shareholders mentioned in the annual list of members and summary
attached herewith, namely :—

51.....

52.....

53.....

54.....

are the employes of the company.

Managing Director,
For and on behalf of
.....Co. Ltd.

Dated :.....

INDIAN COMPANIES ACT CHAPTER XI

Provision relating to Arbitration.

Section 152 provides as under :

S. 152 (1) A company may by written agreement refer to arbitration in accordance with the Arbitration Act, 1940 (X of 1940), an existing or future difference between it and any other company or person.

Power of Company to refer matters to arbitration.

(2) Companies, parties to the arbitration, may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves or by their directors, or other managing body.

(3) The provisions of the Arbitration Act, 1940 (Act X of 1940) shall apply to all arbitrations between companies and persons in pursuance of this Act.

Prior to 1940, the procedure relating to arbitration was provided for in Schedule 11 of the Code of Civil Procedure and in Presidency Towns and certain other notified towns in the Arbitration Act, 1899. Lahore High Court in *Balmokand versus Punjab National Bank Ltd* (1), held that section 152 of the Companies Act was an enabling section and it merely conferred powers on companies to refer disputes to arbitration under the Arbitration Act by an agreement in writing when that course was preferred. It was not obligatory on a company governed by the Arbitration Act to make a reference to arbitration out of Court in the Province of Punjab only in pursuance of the provision of the Arbitration Act and to file an award made on such reference in the Court of District Judge as required by the Arbitration Act. It was permissible for the company although governed by the Arbitration Act to make a reference outside the Arbitration Act and although the award on such reference was filed in the Court of the Senior Subordinate Judge, the decree passed on basis of it was perfectly legal. That view, however, was not followed by the Peshawar Court in *Peoples' Bank of Northern India Ltd. vs. Padamlal Vasuram* (2). The Calcutta Court in *Ihrighat Native Tea Co. Ltd. vs. Gupta* (3) and the Madras High Court in *Catholic Bank vs. Albuquerque* (4) have not followed the Lahore view. The controversy, however, has been set at rest by the new Arbitration Act of 1940 which has repealed schedule II of the Code of Civil Procedure.

Section 2 of Indian Arbitration Act, 1940 has defined the arbitration agreement as under :—

"Arbitration Agreement" means a written agreement to submit one or few differences to arbitrator, whether an arbitration is named therein or not.

The expression "Court" has been defined in the same section as meaning a Civil Court having jurisdiction to decide the questions forming the subject matter of the reference if the same had been subject matter of a suit, but does not, except for the purpose of arbitration proceedings under Section 21 include a Small Cause Court.

It will thus be apparent that a private company can enter into a reference for arbitration under a written agreement only and of matters relating to the arbitration which shall be subject matter of decision by any Civil Court having jurisdiction to decide the questions forming such subject matter if the same had been the subject matter of a suit.

1. 17 Lah. 722; affirmed in *firm Chandoolal Parmanaad v. Messrs Graham's Trading Co.*, (India) Ld. A. I. R. 1938 Lah. 827; and in *Lyallpur Bank Ltd. (In Liquidation) v. Jaigopal*, A. I. R. 1940 Lah. 97.

2. A. I. R. 1938 Pesh. 54.

3. I. L. R. (1940) Cal. 558.

4. (1944) I M. L. J. 290 (F. R.)

CIVIL PROCEDURE CODE, 1908.

ORDER XXIX.

Suits by or against Corporations.

1. In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the Secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.
Subscription and verification of pleading.
2. Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—
Service on corporation.
 - (a) On the Secretary, or on any director, or other principal officer of the corporation, or
 - (b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.
3. The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.
Power to require personal attendance of officer of Corporation.

NEGOTIABLE INSTRUMENTS ACT, 1881.

CHAPTER I

PRELIMINARY.

S. 3. In this Act.

Interpretation Clause. "Banker" includes also persons or a corporation or company acting as bankers: and

"Notary public" includes also any person appointed by the Local Government, to perform the functions of a notary public under this Act.

S. 4. A "promissory note" is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.
Promissory Note.

S. 5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.
Bill of Exchange.

A promise or order to pay is not "conditional," within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain" within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given, or that payment is to be made, may be a "certain person," within the meaning of this section and section 4, although he is misnamed or designated by description only,

Cheque. S. 6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

"Drawer" "Drawee." S. 7. The maker of a bill of exchange or cheque is called the "drawer"; the person thereby directed to pay is called the "drawee." When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor."

When a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accept it supra protest for honour of the drawer or of any one of the endorsers, such person is called an "acceptor for honour."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "Payee."

S. 8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

S. 9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer or the payee or endorsee thereof, if payable to order before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

S. 10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

"Negotiable instrument." S. 13. (1) A 'negotiable instrument' means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Explanation I—A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation II—A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

Expalanation III—Where a promissory note, bill of exchange or cheque, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

(2) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.

S. 15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

(1) Section 89 of the Indian Companies' Act provides :—

S. 89. A bill of exchange, hundi or promissory note shall be deemed to have been made, drawn, accepted or indorsed on behalf of a company if made, drawn, accepted or indorsed in the name of, or by or on behalf of or on account of, the company by any person acting under its authority express or implied.

Bills of Exchange & Promissory Notes in favour of a limited company are validly indorsed as under :—

On behalf of A. & B. Company Ltd.

(Sd.).....

Secretary.

Parties to Notes, Bills & Cheques.

S. 26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery, and negotiation of a promissory note, bill of exchange or cheque.

Minor. A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

S. 27. Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorised agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

INDIAN SUCCESSION ACT, 1925

S. 223. Probate cannot be granted to any person, who is a minor or is of unsound mind nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made by the Provincial Government in this behalf.

S. 236. Letters of administration cannot be granted to any person who is a minor or is of unsound mind nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made by the Provincial Government in this behalf.

Acceptor, 259

'Acceptor for honour, 259

Accounts

- Access to, under debenture trust deed, 160
- Filing of, by receiver, 143
- Of illegal association or partnerships, 15

Account Books

- Automatic checking of, 108
- Of branch office, where to be kept, 107
- Of company and statements, 107-116
- To be kept by companies, 107

Acknowledgment

- Stamp duty, 210

Acquisition

- Of going concern, form, 23-25.

Addition

- Or alteration to articles of association, 44.

Adjournment

- Of meeting by chairman, 127.
- Of meetings of debenture-holders, 159

Administration

- granting of, 260

Admission

- Of partner, 13

Affidavit

- Stamp duty, 210

Agenda

- Directors' meeting, form, 92-93
- For meetings, 117-118
- Of notice of meeting of directors, 91

Agent

- Of subscribers, 40
- Power of negotiation of instruments, 260

Agreement

- Between company and vendor or group or syndicate, adoption of, 73-74
- Between the vendor and syndicate for a proposed company, form of 70-71
- Between vendors and group of promoters, form of, 69-70
- Between vendor and nominee on behalf of company, form of, 71-73
- For sale before incorporation, form of, 66-69
- Preliminary, 66
- Re debenture between creditor and company, 149
- Specific performance of, re debentures, 146
- Stamp duty on, 74.

Agreement or memorandum of agreement

- Stamp duty, 210-212

Agreement relating to deposit of title deeds pawn or pledge

- Stamp duty, 212-214

Allotment

- Cancellation of, by directors, 106
- Letter, effect of, 106
 - Form of, 104
 - Form of, fully paid up shares, 105
 - Loss of, 106
 - Pledge of, 106
 - Re. debenture, 149-150
 - Return of, for share certificate, 106
 - Stamp on, 106
 - Valuable document, 106

Allotment—contd.

- Not necessary for subscribers to memorandum of association, 106
- Of shares, 99, 102
 - By committee, 102
 - Communicated thereof by post, 103
 - Delay in, 103
 - Delegation re. 102
 - Form of, 102, 103
 - Register, form, 106-107
 - Resolution for, by circulation, 103

Alteration

- In capital clause, 82
- In change of name, memorandum of association, 75-76
- In memorandum of association, 75-82
- In objects clause, not sanctioned, 81
- Of articles, effect on old members, 44
- Of articles, inherent right to alter, 44
- Of articles re. debentures, resolution for, 147
- Of articles to oppress minority, 44
- Of object clauses in memorandum of association, 82
- Or addition to articles of association, 44

Amalgamation

- Of company with other companies, 83-86
- Or reconstruction of company, 83

Amendments

- Proposed in Company law, 17

Annual general meeting, 116

- Notice for, 116

Annual list

- and summary of members, 90
- In summary, 131
- return of, 132

Annual meeting

- Register of proxies for, 124

Application

- And allotment register, 99, 106-107
- For purchase of debentures, 148
- For shares, accompanied with payment by cheque, 102
 - Amount payable, 101
 - By firm, form of, 100-101
 - Form of, 99
 - In fictitious name, 102
 - Oral, 102
 - Withdrawal of, 102

Appointment

- Of and registration of receiver, 143
- Of proxy by company, 121
- Of receiver, under trust deed, 157
- Voluntary winding up, notice of his appointment by liquidator, 167
 - If inspection committee by creditors, 170
 - Of liquidator by creditors, 170

Appointment in execution of a power

- Stamp duty, 214

Appraisal or valuation

- Stamp duty, 214

Arbitration

- Power of company to refer matter to, 257
- Provision relating to, 257
- Reference for, by private company, 257

Arbitration Agreement

- Definition of under Indian Arbitration Act 1940, 257

Arrangements

With other companies, 83

Articles of association

- Alteration of, effect on old members, 44
- Alteration of or addition to, 44
- Alteration of, re. debentures, resolution for, 147
- Alteration to oppress minority, 44
- Are internal regulations, 42.
- Binding on company and members, 43
- Compulsory, 41.
- Definition of, 40.
- Effect of at company and members, 43
- Form of, where table 'A' applied with modifications, 46-48
- Infringement of and members' right to restrain, 43
- Inherent right to alter, 44
- Nature of objects of, 42
- Prejudice outsider, 44
- Provide revenue of the company, 42
- Registration of, 41
- Relation of with solicitor or secretary, 43 (Note 11)
- Relation with outsider, 43
- Scope of, 42
- Short form of, 45-46
- Subsidiary to memorandum, 42
- Supplementary to memorandum, 42 (Note 7)
- To clear ambiguity in memorandum, 42
- Ultra vires, 43
- Where contract between company and third person, 43
- Where table 'A' applied, 48-60

Articles of association of a company

—Stamp duty, 215

Assets

- Priority re. payment of debts out of, subject to floating charge, 146
- Register of, 109

Association

- Illegal, 15
- Accounts of, 15

Attestation

- of proxy, 121

Award

- Stamp duty, 215-216

Balance sheet, 109, 111

- A pictorial representation of company's trading position, 111
- Authentication of, 112-113
- Book debts, 111
- Form, 253-255
- Including particulars as to subsidiary companies, 113-114
- Income-tax, provision for in, 112
- Liability of directors, 113
- Preparation of, 111
- Profit and loss, 112
- Reserves in, 111-112
- Scrutiny of, 128
- showing depreciation, 112

Banker

- What is, 258

Bearer

- Debenture to, form of, 150-151
- Conditions of, 150-151

Bearer debentures, 138**Bill of exchange**

- Definition of, 258
- Stamp duty, 217

Bill of lading

- Stamp duty, 218

Board of directors

- Independent of promoters, 17
- Exceptions thereto, 18 Note (1)

Bond

- Stamp duty, 218-220

Books

- Directors liability, default in keeping proper books, 107
- Inspection of, by share-holders, 15
- Managing agents' liability, default in keeping proper books, 107
- to be kept by company, 107

Book debts

- Floating charge on, 135
- In balance sheet, 111
- Mortgage of, in debentures, 135

Borrowing

- By companies, 13

Bottomry Bond

- Stamp duty, 220

Branch Office

- Account books of, where to be kept, 107

Brick makers

- Memorandum of association, object clause, 25

Business

- Continuity of companies, 11
- Conversion of, into private company, 65-66
- Converted into company, circular to old customers, 74-75
- Non-commencement of, 162
- Running, valuation of, 65-66

Cancellation

- Of allotment by directors, 106
- Stamp duty, 221

Capital

- Called, mortgage of in debenture, 139
- Dividends when not to be paid out of, 128-129
- Profits not to be paid out of, 129
- Uncalled, grant of, in debentures, 138

Capital clause

- Alteration in, 82
- In memorandum of association, 39-40

Chairman

- Adjournment of meeting by, 127
- Authorities of, 127
- Duties of, 127-128
- In meeting of debenture holders, 158
- To decide validity of proxy, 123

Charges

- And mortgages, register of, 142

Cheque

- Definition of, 259
- With application of shares, 102

Chemists

- Memorandum of association, object clause, 26

Cement Companies

- Memorandum, object clause, 26

Certificate

- Conclusiveness of, 65
- Endorsement of, on register of debentures 142-143
- Form of, 256
- Of commencement not necessary, 86
- Of incorporation, 65
- Of register of mortgages and charges, 142
- Of registration of debenture, 142
- With private limited company re. number of members, 132

Certificate of sale

- Stamp duty, 221

Certificate or other document

- Stamp duty, 221

Cinema and theatrical business

- Memorandum, object clause, 26-28

Circular

- To old customers of business converted into company, 74-75

Circulation

- Allotment of shares by, resolution for, 103

Committee

- Constituted to allot shares, 102

Company

- Account books of, 107-116
- Acquisition of, 6-7
- Agreement between vendor and nominee on behalf of, form of, 71-73
- Agreement between vendor and syndicate for a proposed company, form of, 70-71
- Amalgamation of, with other companies, 83-86
- And creditor, agreement between re. debentures, 149
- And third person, contract between, articles of association, 43
- And vendor or group or syndicate, agreement between, adoption of, 73-74.
- Appointment of proxies by, 121
- Arrangement with other companies, 83
- Articles, binding on, 43
- Articles provide revenue of, 42
- Articles of association, stamp duty, 215
- Authorising directors to issue debentures, resolution, form of, 146-147
- Bills of exchange and promissory note's indorsement in favour of, 260
- Borrowing by, 13
- Change in name of, 21
- Chief characteristics of, See Chap. V
- Companies Act, History of in England 2-3
- Companies Act, History of in India, 3
- Companies' Consolidation Act, 2
- Conversion of deferred, 74
- Different from subscribers, 6
- Dissolution of, 161-174
- Effect of articles at, 43
- Frauds in promotion of, 17
- In legal person, 5

Company—contd.

- Inspection of documents filed by, with registrar, 63
- Joint Hindu family firm, different from, 4
- Letter, Circular to old customers of business converted into, 74-75
- Letter, re. change of name of, form of 76-77
- Limited by guarantee, 6
- Limited by shares, 6
- Limited, disadvantages of, 16
- Liquidation of 161-174.
- Lunacy in, effect of, 15
- Memorandum of association, charter of, 20
- Memorandum of association of, stamp duty, 234
- Name of, 21
 - Change of, 75-76
 - When object clause altered, 81
 - On its communications and papers, 87
- New, sale by partners to, 5
- One man, 6
- Places of business, 22
- Power of to refer matters to arbitration, 257
- Preliminary matters in formation of, 19
- Private, 1
 - As subsidiary of a public, 114-115
 - Certificate with, re. number of members, 132
 - Conversion of business into, 65-66
 - Definition of, 7
 - Formation of, 19-22
 - History of, 3
 - Memorandum of, form, 22-23
 - Popularity of, 9
 - Privileges of as compared to public companies, 8-9
- Reference for arbitration, 257
- Promotion and formation of, See Chap. V
- Public, definition of, 7
- Publicity in, 16
- Reconstruction of or amalgamation of, 83
- Registers to be kept with, 87
- Registration of charges on property acquired by, 141
- Resolution of, to issue single debentures, 147
- Share-holder as creditor of, 14
- Statutory, 2
- Subsidiary, balance sheet including particulars as to, 113-114
- Taxation of, 16
- To keep account books, 107
- To keep books, 107.
- Trading position of, balance sheet a pictorial representation, 111
- Unable to pay its debts, winding up by court, 163-164
- Under letters patent, 2
- Unincorporated in England, 1
- Unlimited, 6
- Voluntary winding up, distribution of property of, 172
- Winding up of, 161-174
- Winding up of, special resolution for, 161
- With limited liability, advantages of, See Chap. IV

Company Law

- Amendments proposed in, 17

Company rules 1941, 175-177.**Company rules, 1941, Prescribed forms, 177-194**

- Composition deed**
 - Stamp duty, 222
- Confirmation**
 - Of proceeding of directors' meeting, 93
- Contracts**
 - Register of, where directors interested, 96
 - Form of, 98
- Conversion**
 - Of business into private company, 65-66
 - Of company, deferred, 74
 - Of debentures into registered debentures, 138
- Conveyance**
 - Stamp duty, 222-224
- Co-parseners**
 - Non-active, non-liability of, 4
- Copy or extract**
 - Stamp duty, 224-225
- Corporation**
 - Personal attendance of officers of, 258
 - Service on, 258
 - Suits by or against, 258
 - Subscription and verification of pleading, 258
- Costs**
 - Of voluntary winding up, 173
- Cotton and woollen mills**
 - Memorandum, object clause, 28
- Counterpart or duplicate of any instrument**
 - Stamp duty, 225
- Court**
 - Definition of under Indian Arbitration Act, 1940, 257
 - Interpretation of memorandum by, 15
 - Trustees require advice from, 160
 - Voluntary winding up, determination of questions by, 172
 - Power of court to remove liquidator, 173
 - Winding up by, 161-166
 - Company unable to pay its debts, 163-164
 - Debt whether bona fide disputed, 164
 - Facts constituting inability to pay, 163-164,
 - Just and equitable clause 162, 165, 166
 - Bubble company, 165
 - Deadlock, 165
 - Fraudulent company, 165
 - Grounds akin to dissolution of partnership, 165
 - Justifiable lack of confidence in management, 165
 - Misuse of power by majority, 165
 - Substratum gone, 165
 - Neglect to pay its debts, 164
 - Non-commencement of business, 162
 - Suspension of business, 162-163
 - Winding up subject to supervision of, 161, 174
 - Different from compulsory winding up, 174
 - Effect of petition for, 174
 - Effect of order of court, 174
- Creditor**
 - And company, agreement between re. debenture, 149
 - Voluntary winding up by, 166, 169-172
 - Appointment of liquidator 170
 - Appointment of inspection committee, 170.
 - Arrangement when binding on, 173
 - meeting of, 169
- Dairy farms**
 - Memorandum, object clause, 29-30
- Date**
 - of proxy, 121
- Death**
 - Of partner, 12
 - Of sole-proprietor, 12
- Debentures**
 - Agreement between creditor and company, 149
 - Allotment letter, 149-150
 - Application for purchase of, 148
 - Certificate of registration of, 142
 - Conversion of, into registered debentures, 138
 - Covenants in trust deed, 156-157
 - Endorsement of certificate on register of, 142-143
 - Floating charge in, 133-134
 - Grant of uncalled capital, 138
 - Including mortgage of book debts, 135
 - Inspection of trust deeds regarding, 145
 - Instrument of, copy to be kept, 143
 - Issue of, 13
 - Kinds of, 132-133
 - Mortgage of called capital in, 139
 - Particulars of commission, 142
 - Particulars of, to be filed with registrar, 141-142
 - Perpetual, 145
 - Power of appointment of receiver in trust deed, 157
 - Registered, advantages of, 138.
 - Register, form of, 151-153
 - Registration of, 139
 - Re-issue of, 145
 - Resolution for alteration of articles, 147
 - Resolution for second issue of 147
 - Resolution of company authorising directors to issue, 146-147
 - Resolution of company to issue single, 147
 - Resolution of directors to issue single, 147
 - Resolution of directors to issue series, 147-148
 - Specific performance of agreement, re. 146
 - Stamp on, 135-136, 225-226
 - Statutory preference relating thereto, 140-146.
 - To bearer, Conditions of, 150-151
 - form of, 150-151
 - Trust deed, 136, 154-161
 - Access of trustees to account, 160
 - Conditions in, 136-137
 - Contents of, 136
 - Rights of trustees, 160
 - Short form, 153-154
 - Trustees under, remuneration of, 160
 - Resignation of, 160-161
 - Seeking advice from court, 160.

- Debenture bearer, 138**
- Debenture holders**
 - Adjournment of meeting of, 159
 - Chairman in meeting of, 158
 - Definition of extraordinary resolution re. meeting of, 159-160
 - Meeting of, 157-160
 - Attendance of trustees, 158
 - Minutes of, 160
 - Quorum in meeting of, 158
 - Resolution of, binding nature of, 159
 - Vote at meeting, 159
- Debenture stock, 137**
- Debts**
 - Priority re. payment of, out of assets, subject to floating charge, 146
- Declaration of compliance**
 - Form of, 62-63
 - With the Act, 62
- Default**
 - In keeping proper books, directors' liability, 107
 - Managing agents liability, 107
 - Penalties for, in filing registration of particulars mortgages, of 144
- Deferred shares. See shares**
- Definition**
 - Acceptor, 259
 - Acceptor for honour, 259
 - Arbitration agreement under Indian Arbitration Act 1940, 257
 - Articles of association 40.
 - Bill of exchange, 258
 - Cheque, 259
 - Court under Indian Arbitration Act, 257
 - Drawee in case of need, 259
 - Drawer and Drawee, 259
 - Extraordinary resolution re. debenture-holders meeting 159-160.
 - Holder, 259
 - Holder in due course, 259
 - Indorsement, 260
 - Memorandum of association, 19.
 - Negotiable instrument, 259
 - Payee, 259
 - Payment in due course, 259
 - Private company, 7.
 - Promissory note, 258
 - Public company, 7
- Delay.**
 - In allotment of shares, 103.
- Delegations**
 - Re. allotment of shares, 102.
- Delivery order**
 - Stamp duty, 226
- Deposit**
 - Of proxies, when to be made, 120
 - With whom to the made, 122
- Depreciation**
 - Balance sheet, 112
- Directors**
 - And managers, register of, 94
 - Authority to issue standing proxy, 121
 - Disclosure of interest, 96
 - Disclosure of interest when not necessary, 97-98
 - Duty of, in conflict with his interests, 97
 - Interested, 98
 - Issue of proxy by, 121
 - Liability of, for default in keeping proper books, 107
 - Liability of re. balance sheet, 113
 - Managers, and managing directors, and directors register, form, 95
 - Meeting of, Agenda, form of, 92-93
 - And particulars of minutes 90-92
 - Confirmation of proceedings, 93
 - Minute book of, inspection of by members, provision for, 91 note (1).
 - Minutes of, 91
 - Minutes of. form of, 91-92
 - Proceedings of, 90
 - Record of resolutions, 93
 - No power to cancel allotment, 106
 - Notice of meeting of, and agenda, 91
 - Remuneration of, as nominee of another company, 111
 - Resolution of, to issue debentures in series, 147-148
 - Resolution of, to issue single debentures, 147
 - Report, of 115
 - Form of, 115-116
 - Responsibility of re. dividend, 129-130
 - Signing of minutes of proceedings, 93
 - Vacation of office of, 96-97
- Dissolution**
 - Of company, 161-174
 - Voluntary winding up, 171-172
- Dividend**
 - Cumulative, 61
 - Responsibility of directors re. 129-130
 - When not to be paid out of capital, 128-129
 - Without real profits, 129
- Documents**
 - Allotment letter, valuable document, 106
 - Inspection of, with registrar, 63
 - To be filed with registrar, 62-63
- Double entry system, 103**
- Drapers**
 - Memorandum, object clause, 29
- Drawee in case of need, 259**
- Drawer and Drawee**
 - Definition of, 259
- Endorsement**
 - Of certificate on register of debentures, 142-143
- Engineering**
 - Memorandum, object clause; 30
- England**
 - Company, unincorporated in, 1
 - History of Companies Act in, 2-3
 - History of unincorporated association in, 1
- Exchange of property**
 - Stamp duty, 226-227
- Executors**
 - Appointment of, impracticable to continue business, 12
- Expenses**
 - Of management, 17
- Extraordinary resolution See resolution.**
- Fees**
 - Registration and filing, 63-65

Firm

- Application for shares, form of, 100-101
- Partner, agent of, 14
- Partner, misapplying money of, 11
- Registration of, 16.

Floating charge, 133-134

- Characteristics of, 133-134
- On book debts, 135
- On undertaking, 135
- Priority re. payment of debts out of assets, subject to, 146
- Tests of, 136

Form

- Acquisition of going-concern, 23-25
- Agreement between the vendor and syndicate for a proposed company, 70-71
- Agreement between vendor and group of promoters, 69-70
- Agreement between vendor and nominee on behalf of company, 71-73
- Agreement for sale before incorporation, 66-69
- Allotment letter, 104.
- Allotment letter, fully paid up shares, 105
- Allotment of shares 102, 103
- Allotment of shares register, 106-107
- Application for shares by firm, 100-101
- Balance sheet, 253-255
- Debenture register, 151-153
- Debenture to bearer, 150-151
- Declaration of compliance, 62-63
- Directors' meeting, agenda, 92-93
- Directors' report, 115-116
- Letter re. change of name of company, 76-77
- Memorandum of private company, 22-23
- Minutes of directors' meetings, 91-92
- Of application for shares, 99-100
- Of articles, where table 'A' applied with modifications, 46-48
- Of certificate, 256
- Of register of managers, directors and managing directors, 95
- Of resolution of company authorising directors to issue debentures 146-147
- Petition for change of name, 79
- Petition for change of registered office, 79
- Proxy, 121
- Registered office, notice of, 63
- register of contracts, where directors interested, 98
- Short form of articles of association, 45-46
- Short form of debenture trust deed 153-154
- Trust deed to support debenture, 153-154

Formation

- And promotion of companies, See Chap. V
- Of companies, preliminary matters, 19

Foster's case, 5**Frauds**

- In promotion of companies, 17

Fraudulent

- Acts of partner, 14

Furnishers

- Memorandum, object clause, 29

Further charge

- Stamp duty, 227-228

General Meeting

- Minutes of, 118-119
- Notice, period of, 125-126.

General Store-keepers

- Memorandum, object clause, 29

Goldsmith and Watchmakers

- Memorandum, object clause, 30-31

History

- Of companies Act in England, 2-3
- Of Companies Act in India, 3
- Of Private Companies, 3
- Of unincorporated Association in England, 1

Holder, 259**Holder in due course, 259****Holding out**

- Doctrine of, 10

Income-tax

- And shares, 62
- Provision for, in balance sheet, 112

Incorporation

- Agreement for sale before, form of, 66-69
- Certificate, 65

Indemnity bond

- Stamp duty, 228

Index

- Of register of mortgages and charges, 142

India

- History of Companies Act in, 3

Indorsement, 260**Insolvency**

- Of partners, 12

Inspection

- Of books by shareholders, 15
- Of documents filed by company with registrar, 63
- Of instruments creating mortgages etc., 144
- Of minute book of directors' meetings by members, provision for, 91 note (1)

Interpretation

- Of memorandum by Court, 15

Joint Hindu family

- A legal person, 3-4
- Firm, characteristics of, 3-4
- Firm, different from company, 4
- Firm, exempted from registration, 3
- Firm, non-liability of non-active co-parceners, 4
- Karta as managing member of, 3-4

Journal 108**Karta**

- As managing member of joint Hindu family firm, 3-4

Laundry

- Memorandum, object clause, 31

Lease

- Stamp duty, 228-233

Ledger, 108**Letter of allotment of shares**

- Stamp duty, 234

Letter of credit

- Stamp duty, 234

Letter of license

- Stamp duty, 234

Liability

- A company with limited liability, advantages of, See Chap. IV
- Joint and several, amongst partners, 10
- Of partners, under tort, 11
- Partners, unlimited liability, 10

Liquidation

- Of companies, 161-174

Liquidator

- Voluntary winding up, by creditors, appointment of, 170
 - Courts power to remove, 173
 - Filling of vacancy in office of, 168
 - Notice of appointment by, 167
 - Powers and duties of, 172-173
 - Remuneration of, 168

Loss

- Of allotment letter, 106

Losses

- Due to misfortune, 12
- No stigma on shareholders or managers, 12

Lunacy

- Effect of, in partnership and in companies, 15

Management

- Expense of, 17
- Of registered office, See Chap. VI
- Powers, limitation of, 14
- Shares, 62

Managing Agents

- Liabilities of, for default in keeping proper books, 107
- Powers of, limited, 14

Managing directors

- And managers and directors register, form, 95

Managers

- And directors, register of, 94

Managers—contd.

- And managing directors and directors, register of, form, 95
- Losses, no stigma on, 12

Meetings 116-120

- Adjournment of, by chairman, 127
- Agenda for, 117-118
- Attendance register of, 119
- Notice of, 116-117
- Of creditors, re. voluntary winding up, 169
- Of debenture-holders, 157-160
 - Adjournment of, 159
 - Chairman in, 158
 - Minutes at, 160
 - Quorum in, 158
 - Trustees attendance in, 158
 - Vote of debenture holders at, 159
- Proceedings of, 117, 119-124
- Provision as to and votes, 125-126
- Quorum at, 119
- Reading of notice for convening of, 124
- Reasonable notice for, 126

Members

- Alteration of articles, effect of on old members, 44
- Articles binding on, 43
- Certificate with private limited company re. number of, 132
- Effect of articles at, 43
- Minute book of directors' meetings, inspection of by, provision for, 91 (note 1)
- Pre-emptive right to purchase shares, 7
- Register of 88-89
- Register of, creditors guarantee, 89
- Register of, rectification of, 89
- Register, prima facie evidence of being one, 88
- Right to restrain infringement of articles, 43
- Summary and annual list of, 90
- Two proxies by same member, effect of, 123
- Voluntary winding up, 166, 167, 168, 169

Memorandum of Association

- Alteration of capital clause, 82
- Alteration of object clauses, 82
- Alterations in, 75-82
- Alteration in change of name, 75-76
- Alternate common object clauses, 37-39
- Articles of association subsidiary to, 42
- Articles supplementary to, 42 (note 7)
- Articles to clear ambiguity in, 42
- Attesting witnesses to, 40
- Capital clause, 39-40
- Change of registered office to another province, 77
- Charter of the company, 20
- Clauses of, interpretation by court, 15
- Common object clauses, 35-36
- Contents, 20-21
- Definition of, 19
- Dominant instrument, 42

Memorandum of Association—contd.

- Object clause
 - Brick makers, 25
 - Cement companies, 26
 - Chemists, 26
 - Cinema and theatrical business, 26-28
 - Cotton and Woollen Mills, 28
 - Dairy farms, 29-30
 - Drapers, 29
 - Engineering, 30
 - Furnishers, 29
 - General store-keepers, 29
 - Goldsmith and Watchmakers, 30-31
 - Laundry, 31
 - Mining company, 31
 - Motor car manufacturing company, 31-32
 - Motor dealers, 31-32
 - Newspapers, 32-33
 - Refreshment Rooms, 33
 - Transport company, 33-34
 - Water works companies, 34-35
- Of private company, form, 22-23
- Subscribers of, 40
- Subscribers to, allotment not necessary, 106
- Stamp duty, 234

Mining company

- Memorandum, object clause, 31

Minor

- Negotiation of instruments, 260

Minutes

- At debenture holders' meeting, 160
- Of directors meeting, 91
 - Form of 91-92
 - Signing of, 93
- Of General Meeting, 118-119
- Particulars of, and directors' meetings, 90-92

Minute Book

- Loose leaf inadmissible, 91
- Of Directors' Meetings, inspection of by members, provision for, 91 (Note 1)
- Omission to record resolution, effect of, 91 (Note 2)
- Prima facie evidence of proceedings, 91, 93 (Note 2)

Misappropriation

- By partner, 11

Misfortune

- Losses due to, 12

Motor Car Manufacturing Company

- Memorandum, object clause, 31-32

Motor dealers

- Memorandum, object clause, 31-32

Mortgages

- And charges, register of, 142
 - Satisfaction of, 144
- Effect of non-registration, 140-142
- Of book debts in debentures, 135
- Of undertaking in debentures, 135
- Registration of particulars of, penalties for default in filing, 144

Mortgage deed

- Stamp duty, 234-236

Name

- Change of, of company, letters re., form of, 76-77
- Change of, when completed, 76
- Of company, change of, 75-76
 - When objects clause altered, 81
- Of company on its communication and papers, 87
- Petition for change of, form of, 79
- Negotiable instruments**, 259

Newspapers

- Memorandum, object clause, 32-33

Nominee

- And vendor, agreement between, on behalf of company, form of, 71-73

Non-registration

- Effect of on mortgages, 140-142

Notarial Act

- Stamp duty, 236

Notary Public

- What is, 258

Note or memorandum

- Stamp duty, 236-237

Notice

- By Liquidator of his appointment in voluntary winding up, 167
- Of Annual General Meeting, 116
- Of meetings, 116-117
- Of meetings of directors and agenda, 91
- Of Ordinary General Meeting, period of, 125-126
- Of Registered Office, form, 63
- Of Resolution for voluntary winding up, 167
- Of situation of registered office, 63
- Reading of, for convening meeting, 124
- Reasonable for meeting, 126

Notice Board

- To be put up at registered office, 87

Object

- And nature of articles of association, 42

Object clauses

- Alteration of, 80-82
- Alteration in, not sanctioned, 81

Objection

- To proxy, 120

Office

- Vacation of, by director, 96-97

Outsider

- Articles of association, prejudice, 44
- Relation, with, of articles of association, 43

Parties

- To notes, bills and cheques, 260

Partition, instrument of

- Stamp duty, 238-239

Partner

- Admission of, 13
- Agent of firm, 14

Partner contd.

- Death of, 12
- Fraudulent acts of, 14
- Insolvency of, 12
- Liability, joint and several amongst, 10
- Liability of, under tort, 11
- Misappropriation by, 11
- Sale by, to new company, 5
- Under contract, 10
- Unlimited liability, 10

Partnership

- Accounts of, 15
- Lunacy in, effect of, 15
- Publicity in, 16
- Retirement from, 13
- Share holders as creditors of, 14
- Stamp duty, 239

Payment in due course, 259**Persons**

- Whom administration may not be granted, 260
- Whom probate cannot be granted, 260

Petition

- For change of name, form of, 79
- For change of registered office, form of, 79

Pledge

- Of allotment letter, 106

Policy of insurance

- Stamp duty, 240-242

Poll

- Demand of, 126

Post

- Allotment of shares, communication thereof by, 103

Power of attorney

- Stamp duty, 242-243

Powers

- Limited, of managing agents, 14
- Of management, limitation of, 14

Preference shares, See Shares**Preliminary agreement, See Agreement****Priority**

- Re. payment of debts out of assets subject to floating charge, 146

Private company, See Company**Probate**

- Granting of, 260

Proceedings

- Language of, 90
- Minute book, prima facie evidence of, 91, 93 note (2)
- Of meeting, 117, 119-124
- Of meetings of directors, 90
- Confirmation, 93

Profit

- Dividend without real profits, 129
- Not to be paid out of capital, 129

Profit and loss

- In balance sheet, 112

Promissory note

- Definition of, 258
- Stamp duty, 243

Promoters

- Board of directors independent of, 17
- Definition of, 18
- Group of and vendor, agreement between form of, 69-70
- Kinds of, 18

Promotion

- Of companies, frauds in, 17
- And formation of companies, See Chap. V

Proprietor

- Sole, death of, 12

Protest of bill or note

- Stamp duty, 243

Proxy

- Appointment of proxies by companies, 121
- Attestation of, 121
- Chairman to decide validity of, 123
- Date of, 121
- Form of, 121
- How to vote, 123
- Issue of, by directors, 121
- Leading case dealing with, 120
- Objection to, 120
- Register of, 120, 123-124
- For annual meeting, 124
- Stamp duty, 243-244
- Two by same member, effect of, 123
- What is, 120
- When to be deposited, 120
- Where entitled to vote a resolution, 123
- Where entitled to vote when appointer present, 122
- Who can be appointed, 122
- With whom to be deposited, 122
- Writing of, 121

Public company, See Company**Publicity**

- In partnership and in companies, 16

Quorum

- At meetings, 119
- In meeting of debenture holders, 158

Receipt

- Stamp duty, 244-245

Receiver

- Appointment of, under trust deed, 157
- Filing of accounts of, 143
- Register of mortgages, rectification of, 143
- Registration of, appointment of, 143

Reconstruction

- Or amalgamation of company, 83

Reconveyance of mortgaged property

- Stamp duty, 245-246

Record

- Of resolution of directors meetings, 93

Rectification

- Of register of members, 89
- Of register of mortgages, 143

Refreshment rooms

- memorandum, object clause, 33

Register

- For attendance at meetings, 119
- Of applications and allotment of shares, 99, 106-107
- Of assets, 109
- Of contracts, where directors interested, 96
 - Where directors interested, form of, 98
- Of debentures, endorsement of certificate on, 142-143
 - Form 151-152
- Of directors and managers, 94
- Of managers, managing directors and directors, form, 95
- Of members, 88-89
 - Creditors guarantee, 89
 - Rectification of, 89
- Of mortgages and charges, 142
 - Certificate of, 142
 - Index of, 142
- Of mortgages, rectification of, 143
- Of proxies, 120, 123-124
 - For annual meetings, 124
- Of satisfaction of mortgages and charges, 144
- Prima facie evidence of membership, 88
- To be kept with company, 87

Registered office

- Change of, to another province, 77
- Management of, See Chap. VI
- Notice board to be put up, 87
- Notice of, form, 63
- Notice of situation of, 63
- Petition for change of, form of, 79
- Working of, See Chap. VI

Registrar

- Inspection of documents filed by company with, 63
- Particulars of debentures to be filed with, 141-142
- What documents to be filed with, 62-63

Registration

- Fees, 63
- Joint Hindu family firm exempted from, 3
- Of and appointment of receiver, 143
- Of articles of association, 41
- Of charges on property acquired by company, 141
- Of debentures, 139
 - Certificate of, 142
- Of firms, 16
- Of particulars of mortgages, penalties for default in filing, 144

Regulation

- 46 116
- 56 126
- 66 120
- 95 130
- 97 128

Regulations

- Articles are internal regulations, 42
- Compulsory, 41
- In table 'A' exclusion of by amplification, 42 note (1)

Release

- Stamp duty, 246

Remuneration

- Of director as nominee of another company, 111
- Of liquidator in voluntary winding up, 168
- Of trustees under debenture trust deed, 160

Report

- Of directors, 115
 - Form of, 115-116

Reserve

- Fixed, 112
- General, 112
- In balance sheet, 111-112

Resignation

- Of trustees, 160-161

Resolution

- Effect of, when recorded, 127
- Extraordinary, 124 125
 - Definition of re. debenture holders meeting, 159-160
- For allotment of shares, by circulation, 103
- For alteration of articles re. debentures, 147
- Form of company authorising directors to issue debentures, 146-147
- For second issue of debentures, 147
- Moving of, by proxy, 123
- Of company to issue single debentures, 147
- Of debenture holders, binding nature of, 159
- Of directors meetings, 93
- Of directors to issue debentures in series, 147-148
- Of directors to issue single debentures, 147
- Omission to record in minute book, effect of, 91 note, (2)
- Special, 124-125
 - Re winding up of companies, 161

Retirement of partners, 13**Return**

- Of annual list, 132

Sale

- By partners to new company, 5

Scope

- Of articles of association, 42

Secretary

- Relation of articles with, 43 note (11)

Section

- 12 78
- 13 82
- 15 78
- 16 78-79
- 31 83
- 38 89
- 50 82
- 72 131-132
- 79 125-126
- 81 124-125
- 83 90
- 86(1) 96-97
- 87 94
- 91A 96
- 109 140-141
- 109A 141
- 110 141-142
- 111 142
- 112 142
- 113 142

Section—contd.

—114	142
—115	142-143
—117	143
—118	143
—119	143
—120	143
—121	144
—122	144
—124	144
—125	145
—126	145
—127	145-146
—128	146
—129	146
—130	107
—131	109-110
—131A	115
—132	110
—132A	113
—133	112
—153	83-84
—153A	84-85
—153B	85-86
—162	162
—163	163
—203	166
—204	166-167
—205	167
—206	167
—207	167-168
—208	168
—208A	168
—208B	163
—208C	163-169
—208D	169
—209A	169-170
—209B	170
—209C	170
—209D	170
—209E	171
—209F	171
—209G	171
—209H	171-172
—211	172
—212	172-173
—213	173
—214	167, 173
—215	173
—216	172
—217	173
—218	173
—220	173
—221	174
—222	174
—223	174
—225	174
—227	173-174

Security bond or mortgage deed

—Stamp duty, 246-248

Shares

- Allotment of, 102
 - By committee, 102
 - Communication thereof by post, 103
 - Delay in, 103
 - Delegation re, 102
 - Form, 102, 103
 - Resolution for, by circulation, 103
- And income tax, 62
- Application for, 99
 - Accompanied with payment by cheque, 102
 - Amount payable, 101
 - By firm, form of, 100-101

Shares—contd.

- Application for—contd.
 - In fictitious name, 102
 - Oral, 102
 - Withdrawal of, 102
- Classes of, 60-62
- Company limited by, 6
- Deferred, 61-62
- Fully paid up, form of allotment letter, 105
- Management, 62
- Members pre-emptive right to purchase, 7
- Ordinary, 61
- Preference, 60
- Register of applications and allotment of, 99
- Transfer of, restriction in, 7

Share certificate

- Return of allotment letter for, 106

Share holder

- As creditor of company, 14
- As creditor of partnership, 14
- Firm, 88
- Inspection of books by, 15
- Joint, 88
- Losses, no stigma on, 12
- Summary of, with annual list, 131

Share warrant

- Stamp duty, 248-249

Solicitor

- Relation with articles of association, 43 note (11),

Solomon's case, 5

Solvency

- Voluntary winding up, declaration of, 167-168

Special resolution, See Resolution

Specific performance

- of agreement re. debentures, 146

Stamp duty

- Acknowledgment, 210
- Affidavit, 210
- Agreement, 74
- Agreement or memorandum of agreement, 210-212
- Agreement relating to deposit of title deeds, pawn or pledge, 212-214
- Allotment letter, 106
- Appointment in execution of a power, 214
- Appraisement or valuation, 214
- Articles of association of a company, 215
- Articles of clerkship, 215
- Award, 215-216
- Bill of exchange, 217
- Bill of lading, 218
- Bond, 218-220
- Bottomry bond, 220
- Cancellation, 221
- Certificate of sale, 221
- Certificate or other document, 221
- Composition deed, 222
- Conveyance, 222-224
- Copy or extract, 224-225
- Counterpart or duplicate, 225
- Debenture 135-136, 225-226
- Delivery order, 226
- Exchange of property, 226-227
- Further charge, 227-228
- Indemnity bond, 228
- Lease, 228-233
- Letter of allotment of shares, 234

Stamp duty,—contd.

- Letter of credit, 234
- Letter of license, 234
- Memorandum of association of a company, 234
- Mortgage-deed, 234-236
- Notarial act, 236
- Note or memorandum, 236-237
- Partition, 238-239
- Partnership, 239
- Policy of insurance, 240-242
- Power of attorney, 242-243
- Promissory note, 243
- Protest of bill or note, 243
- Proxy, 243-244
- Receipt, 244-245
- Reconveyance of mortgaged property, 245-246
- Release, 246
- Security bond or mortgage deed, 246-248
- Share warrant, 248-249
- Surrender of lease, 249
- Transfer, 249-251
- Trust, 252
- Warrant for goods, 252

Statements

- And account books of company, 107-116

Statutory companies, See Company**Stock books, 108-109****Subscribers**

- Agent of, 40
- Different from company, 6
- Of memorandum of association, 40
- Allotment not necessary, 106
- Witness attesting, signatures, 40

Suit

- By or against corporation, 253
- Subscription and verification of pleading, 253

Summary

- Of shareholders with annual list, 131

Surrender of lease

- Stamp duty, 249

Syndicate

- Agreement between company and vendor or group or syndicate, adoption of 73-74

Table A

- Applied with modifications, articles, form of, 46-48
- Articles of association, where table A applied 48-60
- Regulations in, exclusion of by amplification, 42 note (1)

Taxation

- Of Companies, 16

Tort

- Partners' liability under, 11

Transfer

- Avoidance of, after commencement of voluntary winding up, 173, 174
- Of shares, restriction in, 7
- Stamp duty, 249-251

Transport company

- Memorandum, object clause, 33-34

Trial balances, 108**Trusts**

- Impracticable to continue business, 11
- Stamp duty, 252

Trust deed

- Covenants in re. debenture, 156-157
- For debenture, form of 154-161
- Power of trustees under, 156-157
- Receiver, appointment of, under, 157
- Re. debentures, inspection of, 145
- To support debenture, form of, 153-154
- Trustees under, borrow and buy, 157

Trustees

- Attendance of in debenture holders meeting, 158
- Power of, under trust deed, 156-157
- Resignation of, 160-161
- Under debenture trust deed, access to account, 160⁴
 - Remuneration of, 160
 - Rights of, 160
 - Seeking advice from court, 160
- Under trust deed, borrow and buy, 157

Undertaking

- Mortgage of, in debentures, 135

Valuation

- Or running business, 65-66

Vendor

- And company or group or syndicate, agreement between, adoption of, 73-74
- And group of promoters, agreement between, form of, 69-70
- And nominee, agreement on behalf of company, form of, 71-73
- And syndicate, agreement between, for a proposed company, form of, 70-71

Vote

- By proxy, 122, 123
- Of debenture holders at meeting, 159

Warrant for goods

- Stamp duty, 252

Water works companies

- memorandum, object clause, 34-35

Winding up

- By court, 161-166
 - Company unable to pay its debts, 163-164
 - Debt whether bona fide disputed, 164
 - Facts constituting inability to pay, 163-164
 - Just and equitable clause, 162, 165, 166
 - Bubble company, 165
 - Deadlock, 165
 - Fraudulent company, 165
 - Grounds akin to dissolution of partnership 165
 - Justifiable lack of confidence in management, 165
 - Misuse of power by majority, 165
 - Substratum gone, 165
 - Neglect to pay its debts, 164
 - Non-commencement of business, 162
 - Suspension of business, 162-163
- Of companies, 161, 174
 - Special resolution for, 161
- Subject to supervision of court, 161, 174
 - Different from compulsory winding up, 174
 - Effect of order of court, 174
 - Effect of petition for, 174

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